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THESIS

NATIONAL SECURITY PERSONNEL SYSTEM (NSPS): A HISTORY OF CREATION AND ENACTMENT OF THE LEGISLATION AUTHORIZING ITS ESTABLISHMENT

by

Shane T. Prater
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March 2008

Thesis Advisors: Douglas A. Brook
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The Department of Defense (DoD) National Security Personnel System (NSPS) was enacted through the FY 2004 National Defense Authorization Act (NDAA), signed into public law by President George W. Bush on November 24, 2003. NSPS enactment served as a key pillar of DoD's ongoing transformation effort and was an historically significant example of modern U.S. Civil Service reform. It also serves as a valuable case study for other government agencies interested in enacting their own civil service reform in the future.

The overall objective of this thesis is to construct an analytical history of the creation and enactment of the legislation that authorized NSPS. The two primary research questions are: 1) how was the original NSPS legislative proposal, Section 101 of "The Defense Transformation for the 21st Century Act," created, and 2) how did Section 1101 of the FY 2004 NDAA, which authorized the establishment of NSPS, become law? The thesis also explores how NSPS was created and enacted through the lens of relevant policy process frameworks.

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NATIONAL SECURITY PERSONNEL SYSTEM (NSPS): A HISTORY OF CREATION AND ENACTMENT OF THE LEGISLATION AUTHORIZING ITS ESTABLISHMENT

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ABSTRACT

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LIST OF ACRONYMS ABBREVIATIONS

AcqDemo	Acquisition Workforce Demonstration Project
AFGE	American Federation of Government Employees
CSRA	Civil Service Reform Act of 1978
DHS	Department of Homeland Security
DLA	Defense Logistics Agency
DoD	Department of Defense
FLRA	Federal Labor Relations Authority
FY	Fiscal Year
GAO	General Accounting Office (prior to July 7, 2004)
	Government Accountability Office (July 7, 2004 and afterwards)
GS	General Schedule
HASC	House Armed Services Committee
HSA	Homeland Security Act of 2002
MSPB	Merit System Protection Board
NDAA	National Defense Authorization Act
NSPS	National Security Personnel System
9/11	September 11, 2001
OMB	Office of Management and Budget
OPM	Office of Personnel Management
PL	Public Law
PMA	President’s Management Agenda
QDR	Quadrennial Defense Review

SASC	Senate Armed Services Committee
SES	Senior Executive Service
STRL	Science and Technology Reinvention Laboratory
USD(P&R)	Under Secretary of Defense for Personnel and Readiness
UDS(AT&L)	Under Secretary of Defense for Acquisition, Technology, and Logistics

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I. INTRODUCTION

A. BACKGROUND

> We are engaged in a new and unprecedented war—the global war on terror. But we are fighting that first war of the 21st Century with management and personnel systems that were developed decades ago, during or even before the Cold War.
>
> DoD is working to deal with the security threats of the 21st Century with a personnel system that was fashioned for the mid-20th Century. We have an industrial age organization that is struggling to perform in an information age world.[1]
>
> - Former Secretary of Defense Donald Rumsfeld

Reform of any type is never easy. Enacting U.S. Civil Service reform has proven especially difficult in recent decades. This was the substantial challenge faced by the Department of Defense (DoD) when it sought to reform how it managed civilian employees in the aftermath of the 9/11 terrorist attacks. Therefore, DoD's successful enactment of NSPS, which substantially reformed its civil human resources management system, was an historically significant accomplishment. It also serves as a valuable case study for future U.S. Civil Service reform efforts.

B. OBJECTIVES OF RESEARCH

The Under Secretary of Defense for Personnel and Readiness (USD(P&R)) and the Naval Postgraduate School Center for Defense Management Reform funded this research project to record the history of enactment of NSPS through the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2004.

---

1. Senate Committee, *Transforming the DoD*, 55, 56.

This thesis will briefly explain the main concepts of popular policy process frameworks, provide a brief history of U.S. Civil Service reform, and detail a variety of precedents for NSPS enactment. It will provide a history of the creation of the original NSPS legislative proposal, followed by an account of its enactment, through the NDAA for FY 2004. Next, it will explain how NSPS was created and enacted through the lens of three relevant policy process frameworks. Finally, it will explore the implications of NSPS enactment and provide recommendations for future research.

C. IMPORTANCE OF RESEARCH

NSPS enactment is a topic of critical importance for two primary reasons. First, NSPS was an historically significant example of modern U.S. Civil Service reform and can serve as a case study for other government agencies interested in enacting their own civil service reform in the future. Second, it served as a key pillar of DoD's ongoing transformation effort.

D. RESEARCH QUESTIONS

The two research questions addressed in this thesis are as follows:

1. How was the NSPS legislative proposal created? More specifically, how was Section 101 of "The Defense Transformation for the 21st Century Act" created?

2. How was NSPS enacted? More specifically, how did Section 1101 of the NDAA for FY 2004, which authorized the establishment of NSPS, become law?

E. SCOPE OF THESIS

The thesis will detail the history of NSPS from creation through the signing of the public law that enacted it on November 24, 2003. It will (1) briefly describe a number of popular policy process frameworks; (2) provide a brief history of U.S. Civil Service reform efforts, and detail precedents for NSPS authorization; (3)

examine how Section 101 of “The Defense Transformation for the 21st Century Act” was created; (4) describe the legislative process that led to the passage of Section 1101 of the NDAA for FY 2004; and (5) explain how NSPS was created and enacted through the lens of relevant policy process frameworks.

F. METHODOLOGY

In writing this thesis, we collected and analyzed information from three types of sources: information provided by USD(P&R), publicly available documents, and interviews with key officials from institutions involved in NSPS creation and enactment.

First, we reviewed documents provided to us by one of the thesis' sponsors, USD(P&R). These documents included talking papers, internal e-mails, drafts of Congressional testimony, responses to Congressional inquiries, draft legislative proposals, comparisons of various legislative proposals, and briefing slides. Our review of these documents provided us with an initial foundation of information to build upon.

Next, we reviewed a wide array of publicly available documents. This review included examining the relevant scholarly literature in public policy, legislative studies, management communication, and rhetorical theory. It also included examining documentary evidence pertaining to the enactment of NSPS, including public media reports, statements and speeches by public officials, Congressional hearings and testimony, fact sheets and position papers from interested parties, Government Accountability Office reports, Federal Registers, Congressional Research Service reports, other theses, websites, reports from previous commissions and studies, and DoD strategic plans. Using the additional information gleaned from these sources, we identified key players in the process, created a timeline of events, and drafted potential interview questions.

Finally, with the assistance of our thesis advisors, we conducted personal interviews with many of the key players in NSPS creation and enactment. These individuals were members of DoD, Office of Personnel Management (OPM), American Federation of Government Employees (AFGE), Office of Management and Budget (OMB), and Congressional staffers. The individuals we interviewed are denoted with an asterisk in Attachment 2. These interviews greatly enhanced our understanding of the process and helped fill in the gaps that existed in the publicly available documents.

G. ORGANIZATION OF STUDY

This thesis is organized as follows: Chapter II briefly reviews popular policy theories and process frameworks, provides a brief history of U.S. Civil Service reform efforts, and details precedents for NSPS authorization. Chapter III examines how Section 101 of "The Defense Transformation for the 21st Century Act" was created, including personal interview data that illustrate the positions and arguments of the institutions involved. Chapter IV describes the chronological events that took the proposed legislation to final enactment via passage of Section 1101 of the NDAA for FY 2004, again using personal interview data to explain the process. Chapter V concludes the thesis by drawing on relevant public policy theory to explain how NSPS was created and enacted.

II. BACKGROUND

A. POLICY PROCESS FRAMEWORKS

> Understanding the policy process requires a knowledge of the goals and perceptions of hundreds of actors throughout the country involving possibly very technical scientific and legal issues over periods of a decade or more when most of those actors are actively seeking to propagate their specific 'spin' on events.[2]
>
> - Paul A. Sabatier

The enactment of NSPS in November 2003 signaled a major shift in how DoD would manage its nearly 700,000-strong civilian workforce. Considering how difficult it has been to achieve meaningful civil service reform in the past, it is prudent to examine a variety of theoretical frameworks regarding the policy process in order to gain a better understanding of how NSPS was enacted. In Chapter V we explore how NSPS was enacted through the lens of the most relevant of these frameworks.

In *Theories of the Policy Process*, Paul A. Sabatier outlined seven theoretical frameworks of the policy process: Stages Heuristic, Institutional Rational Choice, Multiple-Streams, Punctuated-Equilibrium, Advocacy Coalition, Policy Diffusion, and Funnel of Causality.

1. Stages Heuristic

The Stages Heuristic framework, developed by Jones (1970), Anderson (1975), and Brewer and deLeon (1983), is the "textbook approach."[3] It broke the policy process down into a series of stages, usually depicted as agenda setting, policy formulation and legitimation, implementation, and evaluation.[4] Sabatier

2. Sabatier, *Theories of Policy Process*, 4.

3. Ibid., 6.

4. Ibid.

contended that this framework "served a useful purpose in the 1970s and early 1980s by dividing the very complex policy process into discrete stages."[5] However, he suggested that in the late 1980s and early 1990s the framework was widely criticized and thought to have "outlived its usefulness."[6]

2. Institutional Rational Choice

The Institutional Rational Choice framework is actually "a family of frameworks focusing on how institutional rules alter the behavior of intendedly rational individuals motivated by material self-interest."[7] Much of the literature regarding this framework focuses on the relationships between specific institutions, such as the U.S. Congress and various executive branch agencies.[8] The framework is very broad and, according to Sabatier, "is clearly the most developed of all the frameworks … [and] arguably the most utilized in the United States."[9]

3. Multiple-Streams

The Multiple-Streams framework, developed by Kingdon (1984), "views the policy process as composed of three streams of actors and processes: a problem stream consisting of data about various problems and the proponents of various problem definitions, a policy stream involving the proponents of solutions to policy problems, and a politics stream consisting of elections and elected officials."[10] In *Agendas, Alternatives, and Public Policies*, Kingdon claimed these three streams normally operate independently of each other, but occasionally,

5. Sabatier, *Theories of Policy Process*, 6.
6. Ibid., 7.
7. Ibid., 8.
8. Ibid.
9. Ibid.
10. Ibid., 9.

"policy windows" open, providing "policy entrepreneurs" with brief opportunities to "couple" the various streams.[11] If these entrepreneurs are successful, they can achieve a major policy change.

4. Punctuated-Equilibrium

The Punctuated-Equilibrium framework, originally developed by Baumgartner and Jones (1993), advances that policymaking in the United States is "characterized by long periods of incremental change punctuated by brief periods of major policy change."[12] In *Agendas and Instability in American Politics*, Baumgartner and Jones claimed these periods of major policy change occur when opponents of the status quo create new "policy images."[13] They also argued the Punctuated-Equilibrium framework is driven by the interaction between two forces: political agendas and instability, and how issues are portrayed and which institutions have jurisdiction over them.[14]

5. Advocacy Coalition

Sabatier and Jenkins-Smith's (1988, 1993) Advocacy Coalition framework "focuses on the interaction of advocacy coalitions—each consisting of actors from a variety of institutions who share a set of policy beliefs—within a policy subsystem."[15] Within this framework, policy change is viewed as "a function of both competition within the subsystem and events outside the subsystem."[16]

---

11. Kingdon, *Agendas, Alternatives*, 166, 172, 179.
12. Sabatier, *Theories of Policy Process,* 9.
13. Baumgartner and Jones, *Agendas and Instability,* 25.
14. Ibid., 1.
15. Sabatier, *Theories of Policy Process*, 9.
16. Ibid.

6. Policy Diffusion

The Policy Diffusion framework, developed by Berry and Berry (1990, 1992), suggests the adoption of a policy "is a function of both the characteristics of the specific political systems and a variety of diffusion processes."[17]

7. Funnel of Causality

The Funnel of Causality and other frameworks in large scale, comparative studies are "a variety of frameworks that were extremely important in the United States in the 1960s and 1970s in explaining variation in policy outcomes across large numbers of states and localities."[18]

Examining these seven frameworks provided us with a basic understanding of the most popular policy process theories and gave us a foundation of knowledge to use as we began our review of the recent history of U.S. Civil Service reform.

B. BRIEF HISTORY OF CIVIL SERVICE REFORM

In order to fully appreciate the significance of the enactment of NSPS, it is essential to have some understanding of the history of U.S. Civil Service reform. Two single pieces of legislation—the Pendleton Civil Service Reform Act of 1883 and the Civil Service Reform Act (CSRA) of 1978—represent the most significant historical efforts to reform the system. The former established the system itself, while the latter introduced the first major changes to it since its establishment.

1. Pendleton Civil Service Reform Act

Prior to 1883, most federal government employees were appointed or hired based on a system known as "patronage." After each election, victorious political candidates filled jobs with their supporters. While some opposed the

17. Sabatier, *Theories of Policy Process*, 10.

18. Ibid.

system at the time, there was not enough public or political opposition to change it until the summer of 1881. The event that brought the issue to national prominence was the shooting of President James A. Garfield on July 2, 1881, by a disgruntled office-seeker, Charles J. Guiteau.[19]

On December 6, 1881, two and a half months after the death of President Garfield, Senator George H. Pendleton (D-OH) introduced the Pendleton Civil Service Reform Act.[20] The primary goal of the act was to "regulate and improve the Civil Service of the United States," and it provided for a Civil Service Commission, reaffirmation of veterans' preference provisions, merit as a basis for hiring and promotion, and protection from arbitrary demotion or dismissal.[21]

The Pendleton Civil Service Reform Act of 1883 was signed into law by President Chester A. Arthur on January 16, 1883 and became the blueprint for the modern U.S. Civil Service system.[22] It "created a Civil Service based on the merit principles of fair and open competition and competence in contrast to the corruption and incompetence that were rampant under the practice of patronage."[23]

2. Civil Service Reform Act

The U.S. Civil Service system established by the Pendleton Civil Service Reform Act continued largely unchanged until the late 1970s. President Jimmy Carter made civil service reform a "centerpiece" of his administration and established the Federal Personnel Management Project in 1977.[24] Its charter was to develop a "comprehensive plan for civil service reform" and it was

19. OPM, "Biography of an Ideal," 199.

20. Ibid., 201.

21. Ibid., 206.

22. Ibid., 205.

23. OPM, *HRM Policies and Practices*, 3.

24. OPM, "Biography of an Ideal," 276.

comprised of nine task forces, each of which studied a specific topic.[25] The final product of the project was a number of civil service reform legislative proposals.

In March 1978, President Carter submitted the CSRA to Congress.[26] The overall goal of the act was to "resolve both the procedural and organizational problems behind much of the criticism of the civil service."[27] The act included the following key elements:[28]

- Abolition of the Civil Service Commission and creation of the Office of Personnel Management (OPM) and the Merit Systems Protection Board (MSPB)
- A performance evaluation system
- A merit pay system for mid-level managers
- Creation of the Senior Executive Service (SES)
- Greater protection for whistle blowers
- Limitations on veterans' preference
- New authority for personnel administration research and development
- A commitment to equal employment opportunity and a socially representative bureaucracy

Additionally, the bill contained provisions authorizing the establishment of "demonstration projects" to try out new concepts. OPM could establish up to ten demonstration projects at a time and the bill outlined procedures for departments and agencies to follow in setting up such projects.[29]

---

25. OPM, "Biography of an Ideal," 277-78.
26. Ibid., 278.
27. Ibid., 280.
28. Pfiffner and Brook, *Future of Merit*, 2-3.
29. OPM, "Biography of an Ideal," 284.

As the bill worked its way through Congress, two significant changes occurred. First, a provision to establish the Federal Labor Relations Authority (FLRA) was added, and second, the proposed limitations on veterans' preference were removed.[30]

The CSRA of 1978 was signed into law on October 13, 1978 and is codified in various sections of Title 5 of the U.S. Code.[31]

As this very brief history illustrates, cases of U.S. Civil Service reform have been very rare. This makes the enactment of NSPS an historically important event that warrants further study.

C. PRECEDENTS FOR NSPS AUTHORIZATION

Although the CSRA was the last major piece of legislation that resulted in widespread reform of the entire U.S. Civil Service, a variety of events have occurred since its passage that served as precedents for the enactment of NSPS. Some were initiated by the government, while others originated outside the government. Some were closely related and built upon each other, while others stood alone. But each event was important and helped pave the way for NSPS enactment in some manner, be it large or small.

Within the government, there were many precedent activities. For example, DoD personnel demonstration projects and alternative personnel systems allowed the Department to test a variety of personnel management policies and procedures in order to assess those that were most effective. The Defense Science Board Task Force on Human Resources Strategy report provided DoD with evidence that serious problems existed within the structure of its civilian workforce and how it was managed. The U.S. Commission on National Security/21st Century Phase III report provided DoD further evidence of problems with how it managed its civilian workforce. The DoD 2001 Quadrennial

30. Pfiffner and Brook, *Future of Merit*, 2-3.

31. OPM, "Biography of an Ideal," 15.

Defense Review called for transformation of the Department, including how it recruited and managed its civilian workforce. The President's Management Agenda for FY 2002 listed strategic management of human capital as its first initiative and called on executive agencies to link pay with job performance. The DoD Human Resources Strategic Plan directed the establishment of a "Best Practices" initiative and task force to identify the best civilian human resource management policies and procedures for possible Department-wide implementation. The DoD "Best Practices" initiative and task force led to the development of the blueprint for the eventual NSPS. The National Defense Authorization Act (NDAA) for FY 2003 Conference Report directed the Secretary of Defense to provide Congress with a list of legislative changes necessary to allow the Department to more effectively and efficiently manage its civilian workforce. The Homeland Security Act of 2002 contained significant and controversial civil service reform provisions for the 170,000 civilian employees of the newly-created Department of Homeland Security. Many of these same provisions were eventually included in the NSPS legislative proposal submitted to Congress. Finally, the National Commission on the Public Service report once again provided DoD with confirmation that there was a growing crisis within the U.S. Civil Service, including its own workforce, that required urgent attention.

1. Personnel Demonstration Projects and Alternative Personnel Systems

Title VI of the CSRA of 1978 authorized civil service demonstration projects and defined them as "a project conducted by the Office of Personnel Management, or under its supervision, to determine whether a specified change in personnel management policies or procedures would result in improved Federal personnel management."[32] Three of the most prominent of these

32. OPM, "Biography of an Ideal," 119.

demonstration projects occurred at the Naval Weapons Center at China Lake, at DoD Science and Technology Reinvention Laboratories (STRLs), and in the DoD acquisitions workforce community.

Section 6 of the Civil Service Miscellaneous Amendments Act of 1983 authorized the China Lake Demonstration Project at the Naval Weapons Center, China Lake, California.[33] Features of the project included a simplified classification system utilizing broad pay bands, a performance-based pay system for white collar employees, and increased flexibility for starting salaries.[34] Only 5,000 employees were authorized to participate in the project when it was originally implemented.[35] After Congress extended authority for the project to continue in 1984 and 1988, it was extended indefinitely in 1994 by Section 342 of the NDAA for FY 1995.[36]

Section 342 of the NDAA for FY 1995 also authorized the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as STRLs.[37] Once fully implemented, eight STRL demonstration projects covered approximately 25,000 employees in twenty laboratories.[38]

The STRL demonstration projects featured the following personnel provisions, some of which would later be included in NSPS: pay banding, a simplified classification process, pay for performance (including contribution-based pay), a simplified hiring process, modified reduction-in-force procedures, extended probationary periods, distinguished scholastic achievement

33. DoD and OPM, *Federal Register*, Vol. 70, No. 210, 66121.

34. OPM, "Demonstration Project Factsheets."

35. Ibid.

36. Ibid.

37. *National Defense Authorization Act for Fiscal Year 1995*, Public Law 103-337, 103rd Cong., 2d sess. (October 5, 1994), 59.

38. DoD, *Assessment of Existing Civilian*, 4.

appointments, modified term appointments, a voluntary emeritus corps, enhanced training and development, and sabbaticals.[39]

According to the 2002 "Summative Evaluation" of these STRL demonstration projects by OPM's Personnel Resources and Development Center, approximately 55 percent of employees participating in the projects favored them.[40] When managers were asked what they liked best about the project, they indicated it was flexibility and the ability to reward strong performers.[41] For employees, it was "their ability to advance faster than under the General Schedule (GS) system and to receive incentives for doing a good job."[42] DoD later used these evaluation results, and other similar ones, to argue its case for NSPS enactment.

Section 4308 of the NDAA for FY 1996 authorized the Acquisition Workforce Demonstration Project (AcqDemo).[43] Approximately 6,500 employees were participating in AcqDemo in July 2003.[44] AcqDemo implemented eleven personnel initiatives: pay banding, contribution-based compensation and appraisal systems, simplified hiring procedures, a modified reduction-in-force process, expanded appointment authority, a simplified classification system, an expanded candidate selection process, academic degree and certificate training, a voluntary emeritus program, sabbaticals, and flexible probationary periods.[45]

According to the AcqDemo 2001 "Attitude Survey of Participating Employees," 35 percent of participants favored AcqDemo, and 47.3 percent

39. DoD, *Assessment of Existing Civilian*, 5.

40. Adams-Shorter, et al., *2002 Summative Evaluation*, xiii.

41. Ibid.

42. Ibid.

43. *National Defense Authorization Act for Fiscal Year 1996*, Public Law 104-106, 104th Cong., 2d sess. (February 10, 1996), 669.

44. DoD, *Assessment of Existing Civilian*, 2.

45. Ibid., 3.

indicated they were satisfied with their pay.[46] Following AcqDemo implementation, the minimum time to fill vacant positions was reduced from 123 days to sixty-seven days, and position classification times were reduced by as much as 6.6 hours.[47]

These demonstration projects set the stage for the DoD's "Best Practices" initiative, which will be examined later in this section. They allowed DoD to test a variety of personnel management policies and procedures over a number of years in order to assess those that were the most popular and effective.

In addition to testing these policies and procedures, DoD also studied its overall human resources strategy. This study was conducted by the Defense Science Board, whose charter is to provide the Secretary of Defense with "independent advice and recommendations on scientific, technical, manufacturing, acquisition process, and other matters of special interest to DoD."[48]

2. The Defense Science Board Task Force on Human Resources Strategy

The Defense Science Board Task Force on Human Resources Strategy published its final report in February 2000. The report warned there were serious concerns about the DoD civilian workforce: "there is evidence that the quality and capability of the force is beginning to erode from the record highs of the mid-1990s…and it is a concern that extends to the civilian workforce as well."[49] It noted the need for human resource management transformation: "as the Department transforms its force structure to meet the needs of the 21st century, transforming the character and management of the human element of the force is

46. DoD, *Assessment of Existing Civilian*, 2.

47. Ibid., 3.

48. DoD, "Charter, Defense Science Board."

49. DoD, *Assessment of Existing Civilian*, 2.

critical."[50] The task force also argued the situation needed immediate attention and that DoD needed to focus on "shaping an effective civilian force for the future and developing effective tools to support this effort."[51]

The report highlighted a number of problems in the DoD's civilian workforce: an aging population, an insufficient number of new workers being hired, a lack of professional development opportunities, and inflexible compensation and incentive systems.[52] More specifically, it noted a number of alarming statistics about DoD civilian personnel, which accounted for about 40 percent of all federal government civil servants. For example, the number of DoD civilian employees was cut from about 1.15 million in 1989 to approximately 730,000 at the end of FY 1999, an overall reduction of 36 percent.[53] The median age of this workforce had risen from forty-one in 1989, to forty-six in 1999, and the median length of service had risen from eleven to seventeen years.[54] Additionally, DoD planned a further reduction of 80,000 civilian employees by the end of FY 2005, which would constitute a total downsizing from 1989 through 2005 of 41 percent, compared to an active duty military reduction of about 36 percent.[55] In other words, the number of DoD civilian workers had been drastically reduced and those who remained were getting older and closer to retirement age.

Another challenge with the current system noted in the report was the fact that military personnel issues received more attention than civilian personnel issues. One of the primary reasons cited for this was jurisdictional in nature. The report pointed out "the Secretary of Defense and the defense committees in Congress have authority over military personnel while the Office of Personnel

50. DoD, *Assessment of Existing Civilian*, 2.

51. Ibid.

52. Ibid., viii.

53. Ibid., 23.

54. Ibid., 28.

55. Ibid., 23.

Management oversees the civilian workforce."[56] Such an arrangement, it suggested, "makes it difficult to execute timely changes in civilian force-shaping tools."[57]

The report warned the DoD's current human resource policies and practices would not meet the needs of the 21st century force, and that "developing effective force-shaping tools, to meet the demands of the future, will require continuing change in personnel policies and programs."[58]

The task force specifically identified two factors that it claimed limited the effectiveness of the civilian workforce: "a one-size-fits-all core personnel management system with rules set by OPM," and "limited tools for recruiting, sizing, and shaping the civilian force."[59]

It also commented on the fact that demonstration projects were being utilized to overcome problems with the current system rather than to create and implement improvements to it:

> …there is evidence that the demonstrations have become a vehicle to "work around" the current system, rather than change it as new mechanisms are proven effective.
>
> It is time for the Department to infuse greater discipline into the demonstration process—to start extending successful reforms across DoD and converting them into personnel policies and programs.[60]

Based on its work, the task force made the following recommendations:

- The DoD should establish a strategic human resources plan encompassing all elements of the total force: military, civilian, and

56. DoD, *Assessment of Existing Civilian*, x.

57. DoD, *Task Force on Human Resources*, x.

58. Ibid.

59. Ibid., 31-32.

60. Ibid., 40.

private sector personnel.[61] The plan should include changes in legislation and directives and create new management tools to meet specified goals.[62]

- The DoD should develop force-shaping tools that are appropriate for the 21st century. The task force identified a number of priority areas for both civilian and military personnel. For civilian personnel, it recommended DoD "propose legislation amending, as necessary, appropriate provisions of the United States Code (Title 10 and Title 5) to transfer authority for the Department's civilian workforce from the Office of Personnel Management to the Secretary of Defense. This transfer would permit the Secretary to establish policies and develop force-shaping tools for all components of the new 'total force' and in doing so, meet changing DoD requirements."[63]

The Defense Science Board Task Force was not the only group that studied the DoD's civilian human resources strategy. This issue was also indirectly examined by the U.S. Commission on National Security/21st Century shortly after the task force completed its work.

3. U.S. Commission on National Security/21st Century

The U.S. Commission on National Security/21st Century, commonly known as the "Hart-Rudman Commission," was initiated "out of a conviction that the entire range of U.S. national security policies and processes required examination" following the end of the Cold War.[64] It was established "to redefine national security…in a more comprehensive fashion than any similar effort since 1947."[65]

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61. DoD, *Task Force on Human Resources*, ix.
62. Ibid.
63. Ibid., x-xi.
64. U.S. Commission, *Road Map for National Security*, v.
65. Ibid., iv.

The commission completed its work during three distinct phases. Phase I was conducted from July 1998 to August 1999, and the Phase I report, *New World Coming: American Security in the 21st Century*, was published in September 1999.[66] This report attempted to predict how the world would likely evolve over the next twenty-five years. Phase II was conducted from August 1999 to April 2000, and the Phase II report, *Seeking a National Strategy: A Concert for Preserving Security and Promoting Freedom*, was published in April 2000.[67] This report proposed a U.S. national security strategy to deal with the world in 2025. Phase III was conducted from April 2000 to February 2001, and the Phase III report, *Road Map for National Security: Imperative for Change*, was published in February 2001.[68] This final report served as "a blueprint for reorganizing the U.S. national security structure" and recommended a substantial "redesign of the structures and processes of the U.S. national security system" in order to meet the challenges of 2025.[69]

As a relatively small part of the commission's work, it examined issues related to the human resources aspect of national security and management of the U.S. Civil Service. Section IV of the Phase III report was entitled "The Human Requirements for National Security" and specifically addressed the U.S. Civil Service. It noted that even though there was some disagreement about the extent of the crisis in the U.S. Civil Service, there were a number of serious problems that required immediate attention. These problems included an aging federal workforce and challenges associated with recruiting and retaining new government employees, especially those with information technology skills and less-common language skills.[70] The report also pointed out that "many of these problems are self-inflicted to the extent that departmental authority already

66. U.S. Commission, *Road Map for National Security*, v.

67. Ibid., v-vi.

68. Ibid., i.

69. Ibid., iv, vi.

70. Ibid., 96.

provides some remedy if only the institutional will and budgetary resources were also available."[71] It specifically noted that while a number of incentive programs existed to recruit and retain employees, sufficient funds were seldom available to pay for them:

> OPM and individual agency personnel offices have designed many incentive programs to recruit and retain quality employees, but many departments and agencies have not used these programs due to lack of funds. Because all incentive programs are drawn from the same pool of money as that for salaries, administrators must trade off incentives for some employees against the ability to hire additional personnel. Additional funds must be provided to maximize agencies' options in recruiting and retaining high-quality personnel.[72]

The report also highlighted the fact that the civil service was facing a rapidly aging workforce, 60 percent of whom were eligible for early or regular retirement at the time it was published.[73] This troubling figure was even more serious, the report claimed, due to the small number of government employees in their twenties and thirties.[74] These concerns were quite similar to those raised by the Defense Science Board Task Force on Human Resources Strategy report.

The commission made this recommendation: "the President should order the elimination of recruitment hurdles for the Civil Service, ensure a faster and easier hiring process, and see to it that strengthened professional education and retention programs are worthy of full funding by Congress."[75]

On March 29, 2001, former Secretary of Defense James R. Schlesinger and Admiral Harry D. Train (USN, Retired), both of whom served as commissioners, testified before a Joint Hearing of the Senate Subcommittee on Oversight of Government Management, Restructuring, and the District of

71. U.S. Commission, *Road Map for National Security*, 96.

72. Ibid., 99.

73. Ibid., 97.

74. Ibid.

75. Ibid., 98.

Columbia, and the House Subcommittee on Civil Service and Agency Organization. They stated "it is the Commission's view that fixing personnel problems is a *precondition* for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy."[76] Additionally, they noted "Although the Commission's mandate involved a review of the entire U.S. national security apparatus, the fourteen Commissioners believe the issue of human capital to be so important that it comprises one of only five major sections in the report."[77]

This commission's report provided DoD with another assessment that indicated there were serious problems with the current U.S. Civil Service system and by extension, its workforce, this time by a respected, non-partisan, non-DoD commission. It would serve as another study to reference when arguing the urgent need for NSPS enactment.

In late 2001, DoD also highlighted the need for change in how it managed its civilian workforce when it published the 2001 Quadrennial Defense Review.

4. DoD 2001 Quadrennial Defense Review

The 2001 Quadrennial Defense Review (QDR) report was published on September 30, 2001 and it mapped out "the most comprehensive reform of HR programs, systems, and practices in DoD's history."[78]

According to the *DoD Assessment of Existing Civilian Personnel Demonstration Authorities,* the "starting point" for the DoD's strategic planning efforts was the 2001 QDR report, which set the stage for the "transformation of America's defense for the 21st century."[79] In response to the QDR, DoD

76. House and Senate Subcommittees, *National Security Implications*, 36.

77. Ibid.

78. DoD, *Civilian H.R. Strategic Plan*, 5.

79. DoD, *Assessment of Existing Civilian*, ii.

"developed the 2002-2008 Civilian Human Resources Strategic Plan to ensure this transformation with a talented and professionally developed civilian workforce."[80]

The QDR asserted that a transformed U.S. military force must be matched by a support structure that was equally "agile, flexible, and innovative," and that highly skilled and motivated people were the "foundation of a leaner, more flexible support structure."[81] Therefore, the QDR classified improving the skills of the existing workforce and recruiting and retaining new individuals as top priorities.[82] It noted that accomplishing these objectives would require strong leadership and innovative thinking, and new rules for hiring and managing personnel.[83] To help accomplish these objectives, the report stated the DoD would develop a strategic human resources plan for both military and civilian personnel which would "identify the tools necessary to size and shape the military and civilian force to provide adequate numbers of high-quality, skilled, and professionally developed people."[84]

The QDR indicated many of the "advances" in private sector human resources management had not been incorporated into the DoD civilian personnel management system. It therefore recommended the adoption of a human resources approach that included: modernized recruiting techniques, a more flexible compensation system, enhanced training, and additional career planning and management tools.[85]

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80. DoD, *Assessment of Existing Civilian*, ii.
81. DoD, *Quadrennial Defense Review*, 49-50.
82. Ibid., 50.
83. Ibid.
84. Ibid.
85. Ibid., 51.

In simplest terms, the 2001 QDR called for "transformation" of the DoD, and this initiative was one of the primary justifications cited when NSPS was being debated. In fact, NSPS was eventually referred to as the "centerpiece" of the transformation of the DoD.[86]

5. President's Management Agenda for FY 2002

The call for reform of the U.S. Civil Service was also included in President George W. Bush's management agenda for FY 2002. The first government-wide initiative listed in the President's Management Agenda (PMA) was "Strategic Management of Human Capital."[87] In introducing the topic, President Bush provided the following assessment:

> We must have a Government that thinks differently, so we need to recruit talented and imaginative people to public service. We can do this by reforming the civil service with a few simple measures. We'll establish a meaningful system to measure performance. Create rewards for employees who surpass expectations. Tie pay increases to results. With a system of rewards and accountability, we can promote a culture of achievement throughout the Federal Government.[88]

The agenda document made a claim similar to the one included in the QDR: "the managerial revolution that has transformed the culture of almost every other large institution in American life seems to have bypassed the federal workforce."[89] It also pointed out there was a lack of accountability in the current civil service system. As a result, "excellence goes unrewarded, mediocre performance carries few consequences, and it takes months to remove even the poorest performers."[90] To illustrate the extent of the problem, it also pointed out

86. David S.C. Chu, Message from the Under Secretary of Defense (Personnel and Readiness), release of the Strategic Plan for Fiscal Year 2006-2011, April 18, 2006.

87. OMB, *President's Management Agenda*, i.

88. Ibid., 11.

89. Ibid.

90. Ibid., 12.

the Government Accountability Office (GAO) added human capital management to the government-wide "high-risk list" of federal activities in February 2001.[91]

Additionally, the PMA indicated the administration would seek a limited number or "targeted civil service reforms," but encouraged agencies to better utilize the human resource management authorities and flexibilities currently in place.[92] The administration would also assess how these existing authorities and flexibilities were being used by agencies, as well as the effectiveness of a variety of demonstration projects. This assessment would then be used to determine what "statutory changes" were needed to "enhance management flexibility, permit more performance-oriented compensation, correct skills imbalances, and provide other tools to recruit, retain, and reward a high-quality workforce."[93]

The Bush Administration clearly made "strategic management of human capital" one of its top priorities, and NSPS supported this goal. Specifically, the pay-for-performance provision of NSPS was in line with the PMA because it would link pay increases with job performance.

6. DoD Human Resources Strategic Plan

The Under Secretary of Defense, Personnel and Readiness (USD(P&R)) published the first integrated, DoD-wide Civilian Human Resources Strategic Plan in April 2002. The *Civilian Human Resources Strategic Plan, 2002-2008* was developed in conjunction with senior human resources officials from each of the military departments and a number of Defense agencies, and detailed the DoD's future direction, including its "vision, values, principles, critical success

91. OMB, *President's Management Agenda*, 12.

92. Ibid., 13.

93. Ibid.

goals, and objectives."[94] It was also "designed to determine the tools, policies, programs, and compensation strategies needed for the future."[95]

The plan was "built from the QDR and direction provided by USD(P&R)" and served as the DoD human resources roadmap for establishing and monitoring planned activities.[96] During the creation of the plan, existing strategic plans for the Army, Navy, Air Force, Defense Logistics Agency (DLA), and Washington Headquarters Services were consulted, as was the OPM vision for the Federal government's human resources strategic focus.[97] The plan also addressed the issues raised in the Human Capital Initiative of the PMA.[98]

One of the arguments made by NSPS supporters was the need for DoD to recruit more effectively in order to replace the large number of civil servants who would be retiring in the near future. This issue was also addressed in the strategic plan, and the first of its seven goals was to "promote focused, well-funded recruiting to hire the best talent available."[99] The first objective under this goal was to "develop a recruitment strategy designed to attract candidates at any level," and sub-objectives included "determine source of change required in legislation and departmental regulations and practices," and "develop legislative and/or regulatory changes."[100]

The second goal was to "provide a human resources system that ensures the readiness of tomorrow's integrated force structure."[101] The first objective under this goal was to "benchmark human resources processes and practices against industry best practices," and a sub-objective was to "analyze current DoD

94. DoD, *Civilian H.R. Strategic Plan, Annex D*, 7.

95. DoD, *Civilian H.R. Strategic Plan*, 29.

96. DoD, *Civilian H.R. Strategic Plan, Annex B*, 9.

97. DoD, *Civilian H.R. Strategic Plan*, 7.

98. Ibid., A-1.

99. Ibid., 8.

100. Ibid., 13.

101. Ibid., 14.

practices and processes to identify best practices."[102] This sub-objective led to the eventual establishment of the Best Practices Task Force. A second objective was to "continue to pursue legislative and regulatory change to provide for flexible workforce lifecycle management," and a sub-objective was to "draft proposed legislative and regulatory language as appropriate."[103] This led to the eventual creation of The Defense Transformation for the 21st Century Act, the legislative proposal DoD submitted to Congress seeking the enactment of NSPS. The third objective was to "evaluate and transform civilian personnel policies to create flexible business-like processes," and one sub-objective was to "evaluate demonstration projects" and "identify desirable aspects" of them.[104]

After the publication of the original civilian human resources strategic plan in April 2002, the following subsequent annexes were published: *Annex A, FY 2002 Annual Report; Annex B, FY 2003 Year of Execution Plan; Annex C, FY 2003 Annual Report;* and *Annex D, FY 2004 Year of Execution Plan.*

One of the most significant aspects of the strategic plan was that it directed the establishment of a "Best Practices" initiative, which would analyze current DoD practices and processes in order to identify those most beneficial for possible DoD-wide implementation. This was a key step that eventually led to most of the substance of the NSPS legislative proposal and the push for its enactment. NSPS, DoD would argue, was a system developed to implement civilian human resource management best practices from within DoD and from private industry.

7. DoD "Best Practices" Initiative and Task Force

In March 2002, USD(P&R) directed the establishment of the DoD Human Resources Best Practices Task Force.[105] The task force consisted of

102. DoD, *Civilian H.R. Strategic Plan*, 16.

103. Ibid.

104. Ibid., 17.

105. DoD, *Assessment of Existing Civilian*, 7.

representatives from each of the military departments, the Washington Headquarters Service, DLA, and the acquisition and laboratory communities.[106] Officials from both the STRL and AcqDemo demonstration projects participated in the task force.[107] Its charter was to "compile the most promising human resources practices in the government, both within and outside the Department, that would form the basis for a new human resources management system suited to DoD's national security challenges."[108] In doing so, it reviewed demonstration projects and alternative personnel systems throughout the government in an effort to compile proven best practices that showed promise for possible expanded adoption across the DoD.[109] The task force reviewed a total of nine demonstration projects and two alternative personnel demonstration projects.[110] It had four working groups: Classification and Pay, Staffing, Benefits and Entitlements, and Performance Management.[111] It evaluated each initiative using the following four criteria: whether the initiative was in accordance with merit system principles and avoided prohibited personnel practices, whether it was workable, whether it was acceptable, and whether it was affordable.[112]

The Best Practices Task Force examined three aspects of civilian human resource management: compensation, recruitment, and performance management, and the task force provided innovative recommendations in the following areas: 1) pay banding, 2) classification, 3) hiring and appointment, 4) pay-for-performance, 5) sabbatical authority, 6) volunteer service, and 7)

106. DoD, *Civilian H.R. Strategic Plan, Annex A*, 6.

107. DoD, *Assessment of Existing Civilian*, 4, 6.

108. Ibid., 7.

109. DoD, *Civilian H.R. Strategic Plan, Annex A*, 7-8.

110. OSD, *Federal Register*, Vol. 68, No. 63, 16120.

111. DoD, *Civilian H.R. Strategic Plan, Annex A*, 8.

112. Ibid.

reduction in force procedures.[113] The ultimate result of the task force's work was a "consensus on practices that should be adopted for a single DoD human resources system."[114]

The Best Practices Task Force presented its in-process review briefing to USD(P&R) and the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)) in May 2002, and its final briefing to them in July 2002.[115] In turn, USD(P&R) and USD(AT&L) tasked the Deputy Under Secretary of Defense for Civilian Personnel Policy (DUSD(CPP)) "to review the proposals with senior executives from the Components as well as Acquisition and Laboratory communities."[116] The task force's products were "reviewed, revised, and approved during the first week of December 2002 by senior human resources and functional executives."[117] The final product of the task force's work was the publication of a Federal Register Notice on April 2, 2003. This notice "proposed the revision (by amendment) of existing personnel demonstration projects to comply with best practices as identified by the Human Resources Best Practices Task Force and revised and approved by senior leadership."[118] This meant all current demonstration projects and alternative personnel systems would be replaced by a new system, comprised of the best practices identified by the task force. All these best practices fell under one of the following categories: pay banding, classification, hiring and appointment authorities, pay administration, a pay-for-performance evaluation system, expanded sabbatical authority, a volunteer emeritus program, and revised reduction-in-force (RIF) procedures.[119]

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113. DoD, *Assessment of Existing Civilian*, 8.

114. Ibid., 6.

115. OSD, *Federal Register*, Vol. 68, No. 63, 16120.

116. DoD, *Civilian H.R. Strategic Plan, Annex A*, 8.

117. DoD, *Civilian H.R. Strategic Plan, Annex C*, 3.

118. Ibid.

119. DoD, *Federal Register*, Vol. 68, No. 63, 16120.

In DoD's view, the Best Practices Initiative was a "landmark effort" that moved DoD "beyond a piecemeal approach to a new, unified system of human resources management based on retention of merit system principles, accommodation of veterans' preference, respect for collective bargaining, and sustainment of the enduring values of civil service."[120]

According to Under Secretary of Defense for Personnel and Readiness, David S.C. Chu, the Best Practices Initiative was DoD's effort to "boil down the best human resources management concepts and practices from those in and outside of the Department," and was a plan "to expand tested personnel flexibilities throughout the Department."[121] He also called it a "detailed blueprint for a new system of hiring, assigning, rewarding, and replacing employees" that could be applied "to about 150,000 of Defense civilians who are covered by demonstration project and alternative personnel system authority."[122] However, he additionally indicated new legislation would be needed to further expand the new system "for the balance of the workforce and in order to provide additional critical flexibilities, particularly in the area of labor bargaining."[123]

When asked directly if the final product of the task force's work served as the "blueprint" for NSPS, Ginger Groeber, a task force member and the Former Deputy Under Secretary of Defense for Civilian Personnel Policy, confirmed it did.[124]

120. DoD, *Assessment of Existing Civilian*, 7.

121. House Subcommittee, *Transforming the DoD*, 15, 19.

122. Senate Subcommittee, *Overlooked Asset*, 58.

123. Ibid., 59.

124. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

8. National Defense Authorization Act for FY 2003 Conference Report

The NDAA for FY 2003 Conference Report, published on November 12, 2002, indicated conferees were aware that the federal government was facing a potential "human capital crisis" and it could severely impact DoD.[125] The report acknowledged DoD had developed a human resources strategic plan and had aggressively implemented a number of civilian personnel demonstration projects, but conferees feared "these steps alone may not be sufficient to meet the demand for new hires and to accommodate the reshaping necessary to transform the Department."[126] Therefore, the report directed the Secretary of Defense, Donald Rumsfeld, to review the Department's human resources strategic plan and all existing civilian personnel demonstration authorities.[127] Rumsfeld was also tasked to provide the House and Senate Armed Services Committees, Senate Governmental Affairs Committee, and House Government Reform Committee "an assessment of the effectiveness of these authorities and recommend any legislative changes necessary to effectively and efficiently manage the civilian employees of the Department of Defense" no later than March 31, 2003.[128] In other words, the conference committee directed him to provide it with the necessary legislative proposals to change DoD's current civilian human resources management system.

On August 18, 2003, nearly five months past the deadline set by the conference report, DoD provided each of the aforementioned committees with the *Department of Defense Assessment of the Existing Civilian Personnel Demonstration Authorities* report.[129] This report contained the following information:

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125. *HR 107-772*, 700.

126. Ibid., 700-701.

127. Ibid., 701.

128. Ibid.

129. DoD, *Assessment of Existing Civilian*, cover sheets.

- A discussion of the personnel demonstration projects, including demographic information, intervention/initiatives, and preliminary findings.
- A discussion of DoD's review of the most promising practices tested in the personnel demonstration projects and other alternative personnel systems.
- An explanation of a corporate strategy for embedding these best practices into DoD personnel demonstration projects.
- Identification of recommendations to facilitate the management of an effective DoD civilian workforce.[130]

The conference report was significant because it illustrated the fact that Congress was aware of problems within the DoD civilian workforce and was interested in passing legislation to help fix them. It most likely signaled to DoD that a legislative environment existed in which NSPS would have a good chance of being enacted.

9. Homeland Security Act

President Bush signed the Homeland Security Act (HSA) of 2002 into law on November 25, 2002.[131] This act established the Department of Homeland Security as a Cabinet-level federal agency by combining twenty-two existing government agencies into one department. This was an historic event and has been referred to as "the largest reorganization of the federal government since the creation of DoD in 1947."[132]

The bill contained controversial civil service reform provisions that completely reconstructed the management practices and pay systems for the

130. DoD, *Assessment of Existing Civilian*, ii-iii.

131. *Homeland Security Act of 2002*, Public Law 107-296, 107th Cong., 2d sess. (November 25, 2002), 2135.

132. Anderson and Bahr, "Department of Homeland Security," 17.

approximately 170,000 civil service employees who transferred into the new department.[133] As passed, the bill authorized the Secretary of Homeland Security, in coordination with OPM, to "establish, and from time to time adjust, a human resources management system for some or all of the organizational units of the Department."[134] The system was to be "flexible, contemporary, and grounded in the public employment principles of merit and fitness."[135]

In terms of civil service reform, the significance of the act was that it gave the head of a Cabinet-level federal agency the authority to establish a human resources system, outside of the established U.S. Civil Service system. This provision became one of the most controversial and heavily debated aspects of the entire act.

Individuals who were involved in the effort to enact NSPS differ over the significance of the HSA. Some, such as former OPM Deputy Director Dan Blair,[136] believe NSPS would never have been proposed without the HSA, while others, such as former Principal Deputy Under Secretary of Defense for Personnel and Readiness, Charlie Abell,[137] believe DoD would have proposed NSPS even if the HSA had never been enacted.

10. The National Commission on the Public Service Report

The second National Commission on the Public Service (the first commission was convened in 1988), commonly known as the "Volcker II Commission," was convened by the Brookings Institution's Center for Public

133. Anderson and Bahr, "Department of Homeland Security," 1.

134. *Homeland Security Act of 2002*, Public Law 107-296, 107th Cong., 2d sess. (November 25, 2002), 2230.

135. Ibid.

136. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

137. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

Service in 2002.[138] Its chairman was Paul A. Volcker, former Federal Reserve Board Chairman under Presidents Carter and Reagan.[139] It was "born of the realization that what the first Volcker Commission termed 'the quiet crisis' in the public service had become a roar."[140] The members of the bipartisan commission "joined in a common conviction" that the time had come "to bring government into the 21st century."[141]

The commission issued its final report in January 2003 and it called for "sweeping changes in organizational structure and personnel incentives and practices."[142] In its "Case for Change" chapter, the report listed a number of reasons the civil service system was in urgent need of substantial reform, a partial explanation of why this reform had not occurred thus far, and some of the ramifications of the system's shortcomings.

Some of the reasons identified for why the system needed to be reformed were "one-size-fits-all management, vanishing talent, personnel systems that were out of touch with market reality, personnel systems that were immune to performance, and labor-management conflict."[143] One of the primary problems highlighted about the system was that it did not reward strong job performance. According to the commission, "The bedrock principle of the government's employee classification system was — and is — that job description and time in service determine one's compensation, not skill nor training nor education nor performance."[144] This was acceptable when the system was created and most government employees were clerks performing nearly identical work. But as the report noted, the federal government was no longer dominated by people

138. Senate Subcommittee, *Federal Workforce*, 191.

139. National Commission, *Urgent Business for America*, v.

140. Senate Subcommittee, *Federal Workforce*, 194.

141. National Commission, *Urgent Business for America*, iii.

142. Ibid., iv.

143. Ibid., 7, 8, 9, 10.

144. Ibid., 4.

performing low-skilled jobs. That made the concept of "equal work" nearly impossible to apply to the majority of the tasks performed by civil servants in various government agencies.[145] The report concluded: "the consequence is a compensation system that makes few distinctions between hard-working high-achievers and indifferent nonachievers," and "there are too few rewards for those who do their jobs well and too few penalties for those who perform poorly."[146]

The report attempted to explain why desperately needed reforms had not been enacted:

> Few leaders in Washington, even those who understood the importance of revitalizing the public service, were willing to expend the political capital deemed necessary to do so. And government reorganization has come to be viewed as a task so daunting, requiring such extensive and excruciating political negotiations, that it takes a national emergency to bring it about.[147]

The report pointed out there were serious ramifications that resulted from the current system's shortcomings: "Those who enter the civil service often find themselves trapped in a maze of rules and regulations that thwart their personal development and stifle their creativity. The best are underpaid; the worst, overpaid. Too many of the most talented leave the public service too early; too many of the least talented stay too long."[148]

Also, the report claimed that it was widely recognized there were big problems with the current organization and management of the U.S. Civil Service and "…the vast majority of federal employees know the system is not working and is in need of repair."[149]

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145. National Commission, *Urgent Business for America,* 9.

146. Ibid., 10.

147. Ibid., 2.

148. Ibid., 1.

149. Ibid., 2, 12.

The commission made fourteen specific recommendations, four of which we list here that were directly related to the issue of civil service reform:

- Recommendation 2: The operating agencies in these executive departments (described in Recommendation 1) should be run by managers chosen for their operational skills and given the authority to develop management and personnel systems appropriate to their missions.[150]
- Recommendation 11: More flexible personnel management systems should be developed by operating agencies to meet their special needs.[151]
- Recommendation 12: Congress and the Office of Personnel Management should continue their efforts to simplify and accelerate the recruitment of federal employees.[152]
- Recommendation 13: Congress should establish policies that permit agencies to set compensation related to current market comparisons.[153]

The report concluded that "the federal workforce must be reshaped, and the systems that support it must be rooted in new personnel management principles that ensure much higher levels of government performance."[154] The need for change, it stressed, "could not be more urgent."[155]

The significance of the report for NSPS was that it provided DoD with confirmation from a highly respected, non-partisan, non-government commission that there was truly a "crisis" in the U.S. Civil Service. It supported general NSPS initiatives such as increased flexibility in managing civil servants and specific

150. National Commission, *Urgent Business for America*, 16.

151. Ibid., 27.

152. Ibid.

153. Ibid., 30.

154. Ibid., 26.

155. Ibid., 34.

initiatives such as pay-for-performance. More importantly, it suggested executive departments be given the "authority to develop management and personnel systems appropriate to their missions," which is what DoD was seeking through NSPS.

Chu referenced the recommendations of the Volcker II Commission during Congressional testimony in April 2003, stating "the rigidities of the current federal personnel management system are well documented by … the National Commission on the Public Service (popularly known as the Volcker II Commission) in its January 2003 report, *Urgent Business for America: Revitalizing the Federal Government for the 21st Century*."[156]

OPM Director Kay Coles James also mentioned the report in her Congressional testimony in May 2003, stating, "the call for reform is becoming an ever-louder chorus as managers and leaders join us and others, including the Volcker Commission, in stating the need for reform and suggesting where best to start."[157]

As illustrated here, a variety of events occurred following the passage of the CSRA in 1978 that served as precedents for the enactment of NSPS. Each helped paved the way for its enactment in some manner.

156. House Subcommittee, *Transforming the DoD*, 17.

157. House Committee, *Instilling Agility*, 112.

III. CREATION OF SECTION 101 OF "THE DEFENSE TRANSFORMATION FOR THE 21ST CENTURY ACT"

A. SECRETARY RUMSFELD'S TRANSFORMATION INITIATIVE

One of Rumsfeld's key priorities as Secretary of Defense was to transform the U.S. military by shifting it from a force designed to fight the Cold War, to a force designed to fight smaller, regional conflicts against non-traditional enemies. In simplest terms, he wanted to transform the military into a force capable of fighting the wars of the 21st century. This agenda was reflected in the September 2001 QDR, which mentioned the word "transformation" eighty-nine times and stated "Transformation is not a goal for tomorrow, but an endeavor that must be embraced in earnest today."[158] In a speech at the National Defense University on January 31, 2002, he also stressed transformation included the department's civilian workforce:

> We must transform not only our armed forces, but also the Department that serves them by encouraging a culture of creativity and intelligent risk taking. We must promote a more entrepreneurial approach to developing military capabilities, one that encourages people, all people, to be proactive and not reactive, to behave somewhat less like bureaucrats and more like venture capitalists.[159]

Rumsfeld had challenged DoD leaders to think about transformation in broad terms since he was sworn in as Secretary of Defense on January 20, 2001, but in November 2002, he tasked them to provide him with specific statutory, regulatory, and policy changes that would be required in order to initiate true transformation of the department. [160] According to Ginger Groeber,

158. DoD, *Quadrennial Defense Review,* iv.

159. DoD, "Secretary Rumsfeld Speaks on '21st Century Transformation,'" January 31, 2002.

160. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

who was the Deputy Undersecretary of Defense for Civilian Personnel Policy at the time, Rumsfeld was asking what DoD needed to do to improve the department, create a more modern structure, and have it operate more efficiently.[161] In response, her office provided ideas it hoped would modernize the system, assist supervisors, and allow them to more easily recruit and manage DoD civilian employees. In Groeber's terms, they started with something they thought "would fly politically, which was pay banding," and ultimately moved to "a different compensation system that would move away from the general schedule system."[162] After reviewing the transformation proposal her office had submitted, Rumsfeld was apparently shocked that it was so minimal and reportedly responded, "Is that all there is? Are you kidding me? Is this all you guys want to change?"[163] Chu indicated Rumsfeld told him at the time to "go for everything you can."[164] Groeber was surprised by Rumsfeld's response and indicated that if he was truly serious about transforming the system, her office would like to "overhaul the entire civil service process," as they had been trying to do for a number of years.[165] According to Chu, Rumsfeld's request for transformation initiatives coincided with the completion of his office's Best Practices Initiative and Task Force, and Chu saw it as an opportunity to "consider extending these [Best Practices] authorities to the entire

161. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

162. Ibid.

163. Ibid.

164. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

165. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

department."[166] In Chu's view, Rumsfeld's response provided a green light to be more ambitious in trying to overhaul DoD's entire civilian human resources management system:

> We started out to simply use the authorities we already had, wisely. An opportunity arose to think about doing something more ambitious. The planets came together…so it was the right moment in history to bring this forward.[167]

Former Principal Deputy Under Secretary of Defense for Personnel and Readiness, Charlie Abell, echoed this sentiment. When Rumsfeld challenged the department to provide plans for its transformation, "David and I threw this [NSPS] in the hopper and it became quickly the thing that they said among all the things that were proposed … 'this might be doable.'"[168]

Considering the scope of what they had to put together, Chu, Abell, and Groeber did not have much time to prepare it: Chu recalled they only had approximately three weeks to draft the original legislative proposal for NSPS.[169]

B. CREATION OF THE ORIGINAL NSPS LEGISLATIVE PROPOSAL

Abell and Groeber worked with Helen Sullivan, who at the time served as DoD's Senior Associate Deputy General Counsel for Labor Relations, to draft the original NSPS legislative proposal. Sullivan helped them translate ideas into words and provided legal advice. She also worked closely with attorneys at the White House, the Office of Management and Budget (OMB), and in Congress throughout the enactment process.

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166. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

167. Ibid.

168. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

169. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

Abell had a very clear idea about what he thought the original proposal should look like. He wanted it to be very broad in scope and concise in length. He suggested to Chu:

> Let's propose an authority that says, in two lines, 'the Secretary of Defense shall develop a civilian personnel policy for the national security arena,' period, amen. Let's not go over with a bureaucratic laid-out skeleton with flesh on it. Let's go as broad as we can because, in the process, everybody around us will add things to this, and so we ought to give them the barest bones to which they could add things, and we'll end up with a more structured system than we would hope for.[170]

Abell favored this approach because he knew a number of provisions would be added when OMB and OPM reviewed the proposal and after various Congressional committees debated it.

Chu and Abell also planned to exempt DoD from the rigid requirements of Title 5 of the U.S. Code by adding their proposed legislation to Title 10 instead. The U.S. Code details the general and permanent laws of the U.S., and Title 5 codifies laws pertaining to "Government Organization and Employees," while Title 10 codifies laws pertaining to the "Armed Forces."[171]

As a result of Abell's desire for the proposal to be broad and concise, and Chu and Abell's desire to insert the new system into Title 10, the original NSPS legislative proposal was loosely worded as follows: "Notwithstanding all other titles, the Secretary of Defense may create his own human resources management system."[172] They wrote this first draft, as a proposed addition to Title 10, without input from either OPM or OMB.

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170. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

171. GPO, "United States Code: About."

172. Helen Sullivan (Senior Associate Deputy General Counsel for Labor Relations, Department of Defense), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 17, 2007.

Abell compared this original NSPS legislative proposal to the "Eisenhower Directive" for D-Day: "invade Europe, destroy the enemy."[173] His intent was to start with just one or two sentences and "only add those things we have to add to it."[174]

It is unclear precisely where the name "National Security Personnel System" came from. Sullivan indicated the original name for the proposed system was the "Defense Personnel System," but she said that "Defense" was replaced with "National Security" to make it "seem more global."[175] She thought, but could not confirm, that Rumsfeld or Chu initiated this name change.[176]

C. DOD/OPM IDEOLOGICAL DIFFERENCES EMERGE

Once completed, the original draft proposal was submitted directly to OMB, without OPM coordination. According to Robert Shea, who at the time was the Counselor to the Deputy Director for Management at OMB, DoD sought an "expedited clearance process" and therefore asked OMB "to do an initial clearance so that any inter-agency clearance could be expedited or circumvented."[177] In his opinion, "DoD was clearly trying to circumvent OPM in the clearance process, so OPM had to be much more aggressive to assert themselves."[178]

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173. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

174. Ibid.

175. Helen Sullivan (Senior Associate Deputy General Counsel for Labor Relations, Department of Defense), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 17, 2007.

176. Ibid.

177. Robert Shea (former Counselor to the Deputy Director for Management, Office of Management and Budget), in interview with Dr. Douglas A. Brook, Washington, D.C., September 14, 2007.

178. Ibid.

This was the first indication that there was some degree of friction between DoD and OPM at the time. This friction grew as the NSPS legislative proposal moved forward towards enactment.

Abell characterized DoD's relationship with OPM at the time as "formal," and indicated that OPM was quite concerned that DoD was involving itself in civil service reform, particularly because OPM considered itself, in Abell's terms, the "guardians of the civil service, and thus civil servants."[179] He also indicated OPM Director Kay Coles James was "difficult to deal with" for three reasons.[180] First, she saw herself as a peer to Chu rather than Abell, and Abell indicated that she was therefore hesitant to converse directly with him instead of Chu. Second, he believed she was concerned that DoD was going to go in a direction that did not reflect the Bush Administration's overall personnel management agenda. And third, he sensed that she was troubled by his numerous strong personal contacts on Capitol Hill, contacts that allowed him to work directly with various members of Congress and their committees.

Groeber was even more candid in her description of DoD's relationship with OPM, suggesting it was quite adversarial in nature. She asserted that "the only people internal to the government that we had fighting us was the Office of Personnel Management,"[181] and that "they were constantly trying to put us in our place."[182] Groeber also said that individuals at OPM had openly indicated to her that OPM would not support any major civil service reform proposals DoD put forward. This lack of support was in stark contrast to the relationship the two agencies had enjoyed during the past two presidential administrations, Groeber

179. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

180. Ibid.

181. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

lamented, during which DoD and OPM worked collaboratively to achieve numerous changes to the civil service system.[183] In Groeber's recollection, James informed DoD that not only would OPM would henceforth initiate all reform initiatives, but also that James discontinued joint meetings that were designed to address various human resources management issues.[184]

Groeber believed the main point of contention between DoD and OPM was a difference in philosophy. In broad terms, DoD believed that with the right accountability structure in place, you could design a human resources management system that gave managers the authority to manage their people without constantly having to seek permission to take various actions. As Groeber put it, "You don't have to spend all that bureaucratic time having people come in and ask for permission."[185] Conversely, Groeber explained, OPM preferred not to grant power to agencies, but instead require them to constantly seek OPM approval before acting. In short, Groeber believed that OPM wanted extensive oversight over personnel matters: "[OPM felt that] central oversight of the government required that they [OPM] monitor any system that any agency set up, and [OPM should] be involved in it to make sure that it was consistent across the government in fairness to the American people."[186]

DoD's response to OPM's position was that the current system was not working and needed to be drastically changed. Furthermore, Groeber argued that the system had eroded and could hardly be seen as a unified system in its current state: "oversight of agencies across the board had been so fractioned by many agencies having different authority that you can't think of it as one

182. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

183. Ibid.

184. Ibid.

185. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

186. Ibid.

government structure anymore; there are multiple agencies that have multiple authorities and have multiple missions that are different."[187]

Groeber also argued that OPM was opposed to DoD's desire to enact NSPS because OPM wanted to ensure its own survival as an agency. She pointed out that approximately half of all federal civilian employees were employed by DoD. If OPM were to lose oversight over all of these employees, Groeber explained, OPM's role would diminish significantly. Groeber characterized OPM's resistance as a "survival tactic,"[188] and lamented that "instead of looking at how you further human resources [management]…it was more territorial, [as in] 'I have to keep what I have.'"[189]

Sullivan also indicated the DoD and OPM relationship was "not cordial."[190] Her view was that "OPM was another outside agency with whom we had to deal to get a law."[191] She believed there was a general sentiment within DoD that the OPM Director could not, and should not, try to tell the Secretary of Defense how to run his department or fight the global war on terrorism. In her mind, DoD had to work around OPM, not with it; there was a general DoD attitude, Sullivan said, to just "give us [DoD] what we want and go away."[192]

From the OPM perspective, one of the biggest issues was the manner in which DoD introduced the NSPS legislative proposal to them. According to Doris Hauser, who was the Senior Policy Advisor to the Director, OPM at the time, Chu

187. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

188. Ibid.

189. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

190. Helen Sullivan (Senior Associate Deputy General Counsel for Labor Relations, Department of Defense), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 17, 2007.

191. Ibid.

192. Ibid.

and others went to the OPM Director's office sometime in February 2003 to brief James on their legislative proposal for NSPS.[193] Hauser recollected that the purpose of the visit was "pretty much to tell [James about the proposal] and invite support, and point out that national security was at stake."[194] Hauser claimed that Chu and his associates were not shy about "imposing the national security necessity," and that every other sentence contained the words "national security."[195] DoD stressed that unless it was given independent authority, national security would be at stake and, further, that OPM "dare not oppose" NSPS. Hauser left the meeting with the impression that DoD felt it "just writes its own legislation and you are supposed to salute."[196] She also acknowledged that there was a "huge amount" of tension between DoD and OPM at the time and some of it was "personality driven."[197]

Despite DoD's apparent lack of interest in collaborating with OPM, Hauser and others believed OPM could help DoD achieve many of its goals, most of which could be realized through the utilization of pre-existing Title 5 flexibilities. Her interest was also in helping DoD write legislation that would be less controversial and therefore get enacted more easily. However, OPM asserted that their overriding concern was maintaining the integrity of the merit system principles across the Federal government. Dan Blair, OPM Deputy Director at the time, noted that James fought very hard to ensure OPM had a "seat at the table" during the process, "not because of the organization itself, but keeping in mind its interest in ensuring a merit-based system."[198] Blair also asserted that "if

193. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

194. Ibid.

195. Ibid.

196. Ibid.

197. Ibid.

198. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

push would have come to shove, I don't think that they [DoD] would have sought our assistance so much as we insisted on our participation."[199] OPM officials also believed that giving DoD authorities other government agencies did not have would give DoD an unfair advantage. Hauser summed up OPM's viewpoint this way: "We have to take a point of view that is not only right for one agency, but what implications it has for the other [agencies]. It is not just what is right for you. It is what is going to be sensible and not cause unintended consequences."[200] Ron Sanders, former Associate Director for Policy at OPM, echoed this sentiment. He noted that OPM was concerned that with NSPS, DoD would have an advantage over other government agencies in a number of ways, specifically in recruiting new employees. For example, he believed DoD would have an unfair advantage over NASA when they both tried to hire scientists because DoD would be able to hire more quickly and offer a higher starting salary under NSPS.[201]

While he fully supported OPM's quest to maintain the integrity of the merit system principles, Sanders also admitted that OPM had a reputation of being somewhat hard to deal with, stating that "flexibility is antithetical to OPM."[202] He also agreed with Groeber's assertion that OPM was indeed concerned about its institutional survival should DoD gain the authority to create its own civilian human resources management system.

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199. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

200. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

201. Ron Sanders (former Associate Director for Policy, Office of Personnel Management), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 18, 2007.

202. Ibid.

D. REVISION OF THE ORIGINAL NSPS LEGISLATIVE PROPOSAL

At OMB, DoD encountered a different kind of opposition; specifically, OMB objected that the original, concise version of the NSPS legislative proposal was not acceptable. According to Sullivan, shortly after the original proposal was submitted, she was summoned to OMB and told to redraft the proposal to make it fall under Title 5 of U.S. Code, and to model the human resources management system provisions after those included in Section 9701 of the recently enacted Homeland Security Act of 2002.[203] She was reportedly told to make those changes or "tell us why you need a difference."[204] OMB officials explained to her that the Bush Administration had already "done battle" and "shed blood" to get the DHS human resources management system enacted, and they were not prepared to do either again for DoD.[205] They advised her that the "sum of your universe" is what was enacted for DHS.[206] Based on this OMB guidance, Sullivan did a cut and paste of Section 9701 from the HSA of 2002 and then made the necessary changes to include different or additional authorities requested by DoD. For example, she added verbiage that provided the Secretary of Defense with a "national security waiver" to the requirement that he jointly prescribe all NSPS regulations in conjunction with the Director, OPM.[207]

Over at OPM, officials were generally very supportive of OMB's directive that DoD make its NSPS legislative proposal resemble the corresponding HSA of 2002 provisions. Hauser noted, "It is an instrumental approach for civil service

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203. *Homeland Security Act of 2002*, Public Law 107-296, 107th Cong., 2d sess. (November 25, 2002), 2230.

204. Helen Sullivan (Senior Associate Deputy General Counsel for Labor Relations, Department of Defense), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 17, 2007.

205. Ibid.

206. Ibid.

207. Ibid.

reform to follow the same path."[208] She also expressed her strong belief that if the legislative proposal did not require DoD to collaborate with OPM in developing NSPS, the legislation would be opposed by numerous members of Congress:

> We knew from the DHS saga that there were key Congressional leaders who would say, 'is OPM going to be providing adult supervision?' We knew there was that kind of trust [in] OPM to do the right thing for the whole system.[209]

While officials at OPM were pleased by OMB's guidance, officials at DoD were not. Many believed there were fundamental differences between DHS and DoD, and therefore DoD's human resources management systems needed to be different. For example, DHS only operated within the boundaries of the U.S., while DoD operated around the globe. DHS was tasked with protecting the U.S. against attack, while DoD was tasked with fighting and winning the nation's wars.

Abell bristled and took exception when the NSPS legislative proposal was compared to the newly-enacted DHS system. He believed DHS and DoD were moving in a similar direction, but on parallel, rather than identical, tracks. Abell said that DoD knew exactly what it wanted from NSPS, and it was not the same as the system DHS had gained authority to develop. Instead, DoD wanted a system that was performance-based, empowered supervisors and employees, allowed for a great deal of flexibility, and was less bureaucratic.[210] When Senator Susan M. Collins (R-ME) first asked him why DoD did not simply adopt the DHS system, Abell reflected this position:

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208. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

209. Ibid.

210. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

> They [DHS] took the first step, thank you. We're going to take the second step. And, then, hopefully somebody later will take the third step. But we don't want to settle for this [DHS]; we can do better…the guys after us can do better yet. We'll all learn from them.[211]

Groeber shared Abell's sentiment. In her mind, OMB's decision to model NSPS after the system designed for DHS was the "worst thing" the administration decided.[212] She felt this decision severely hampered DoD's ability to develop and implement NSPS.

As the NSPS legislative proposal was being revised, a number of points of contention arose between DoD and OPM. In broad terms, they differed in their views of the importance of achieving government-wide civil service reform versus reform of just the DoD civilian human resources management system. As part of his prepared statement to a House Armed Services Committee (HASC) hearing, Chu explained why DoD could not afford to wait for the initiation of government-wide civil service reform. He bluntly told the committee, "our national security responsibilities do not allow us to wait for others to act."[213] Blair believed DoD approached civil service reform "from a singular viewpoint of what would enhance its mission," but he argued "that's why there is a central personnel office…to approach government as a whole rather than as a disparate part."[214] Hauser echoed this sentiment, noting OPM had to "take a point of view that is not

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211. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

212. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

213. House Committee on Armed Services, Fiscal Year 2004, National Defense Authorization Act—The Defense Transformation for the 21st Century Act, 108th Cong., 1st sess., May 1, 2003, 1350.

214. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

only right for one agency, but what implications it has for the other."[215] Nancy Dorn, former Deputy Director, OMB, observed that DoD "really wanted their proposal and they didn't really care that much about what happened to the rest of the government."[216] Alternatively, OPM was arguing that if you had DoD to "hitch your wagon to," you might be able to achieve government-wide reform, but "if you let DoD and DHS 'out of the corral' and set up specific things for them, then you were unlikely to get any sort of broader government reform."[217] Former White House Chief of Staff Andrew Card expressed a number of observations about the rift between the two organizations. In his view, OPM was "not very tolerant to what was happening at DoD from a bureaucratic point of view, and DoD wasn't really looking to play with OPM."[218] He believed there was a "bureaucratic stand off," and both organizations were "doing their own thing and hoping that the other side would go away."[219]

In terms of specific details of the legislative proposal, Sanders indicated there were eight to nine "major issues" that DoD and OPM could not agree upon.[220] Three of the more noteworthy issues were the national security waiver, veterans' preference in hiring, and the creation of a separate Senior Executive Service (SES) for DoD. As previously mentioned, within the legislative proposal, DoD included a national security waiver that would allow the Secretary of Defense to waive the requirement that he jointly prescribe all NSPS regulations in conjunction with the Director, OPM. In addition, the proposal waived the

215. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

216. Nancy Dorn (former Deputy Director, Office of Management and Budget), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, and CPT Eric Timmerman, November 1, 2007.

217. Ibid.

218. Andrew Card (former White House Chief of Staff), in phone interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, November 29, 2007.

219. Ibid.

requirement for DoD to apply veterans' preference when hiring, and instead required that DoD merely consider prior military service during the hiring process. The proposal also granted DoD the authority to create and manage its own, distinct SES. Each of these three proposed authorities was strongly opposed by OPM.

E. OMB ACTS AS A MEDIATOR FOR DOD AND OPM

With DoD and OPM unable to reach any agreement on these major issues, OMB stepped in to resolve their differences. Nearly everyone interviewed for this study agreed that OMB served as a "referee" between the two agencies during this contentious period of the process. Clay Johnson III, Deputy Director for Management, OMB, played a leading role in bringing the two sides together, according to Blair.[221]

One key meeting that led to the resolution of the key points of contention between DoD and OPM was chaired by Card and occurred at the White House. According to Hauser, the Secretary of Defense and the OPM Director were directed to attend the meeting and bring one key staff member with them.[222] James selected Hauser to attend the meeting, and they were both surprised when Rumsfeld showed up accompanied by Deputy Secretary Wolfowitz, Under Secretary Chu, the Chairman of the Joint Chiefs of Staff, General Richard B. Myers, and the Assistant Secretary of Defense for Legislative Affairs, Powell A. Moore.[223] According to Chu, Myers volunteered to attend the meeting because he believed the issue was so important to the overall success of the U.S.

220. Ron Sanders (former Associate Director for Policy, Office of Personnel Management), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 18, 2007.

221. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

222. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

223. Ibid.

military.[224] It is unclear why the remaining individuals accompanied Rumsfeld to the meeting, but Card indicated that it was to demonstrate the importance of the issue to DoD and to ensure that its position was well represented and supported. In Card's terms, this move was a "show of the big foot participation," as Rumsfeld's attempt to "put an exclamation point on the need" for NSPS, "to motivate me to pay attention," and to stress "this is important…we have to get this done."[225] But Card also felt that "in the eyes of OPM," it put an "exclamation point on [DoD's] arrogance."[226]

During the meeting, each agency presented its position and tried to gain Card's support, and there were periods when the atmosphere was, in Hauser's terms, "a little tense."[227] According to Hauser, Rumsfeld repeatedly stressed how important NSPS enactment was to ensuring national security, and James often responded by claiming "there is no OPM Director now, or ever, who is going to try to disrupt that."[228]

After hearing both sides present their case, Hauser said that Card ended the meeting by saying that he "heard the issues," and he would let them know his decisions soon.[229] Shortly thereafter, he presented his decisions to DoD and OPM. The results were that DoD maintained its provision for a national security waiver, but it could not waive veterans' preference or create its own SES. Consequently, OPM believed Card's decisions "by and large went the OPM

224. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

225. Andrew Card (former White House Chief of Staff), in phone interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, November 29, 2007.

226. Ibid.

227. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

228. Ibid.

229. Ibid.

way."[230] For their part, DoD felt that the decisions altered the "cornerstones" of NSPS.[231] The NSPS legislative proposal was amended to reflect the unified administration position on these issues but, as Shea pointed out, "there were still violent disagreements as to what the unified administration position should be."[232] Both OPM and DoD felt as though they had lost portions of the debate, and Shea felt that both agencies recognized that "there would be many opportunities to re-litigate those debates" during the enactment process on Capitol Hill.[233]

F. DOD/AFGE IDEOLOGICAL DIFFERENCES

In January 2003, after resolving most of its differences with OPM, DoD met with American Federation of Government Employees (AFGE) officials for the first time to discuss the NSPS legislative proposal. One of DoD's goals was to communicate to AFGE their desire to make DoD's civilian human resources management system "attractive enough" so managers would "continue to use DoD civilians versus contracting out the work."[234] Groeber viewed it as a "huge opportunity" for AFGE to partner with DoD to transform the system, but, in her estimation, an opportunity that AFGE ultimately did not take.[235]

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230. Doris Hauser (former Senior Policy Advisor to the Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, October 18, 2007.

231. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

232. Robert Shea (former Counselor to the Deputy Director for Management, Office of Management and Budget), in interview with Dr. Douglas A. Brook, Washington, D.C., September 14, 2007.

233. Ibid.

234. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

235. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 20, 2007.

According to DoD, there was not much to discuss with union officials because DoD felt that AFGE (the largest union affected) strongly favored the status quo. From DoD's perspective, AFGE opposed making any changes to the current DoD civilian human resources management system because they felt the current system was fine. Sullivan summed up DoD's perspective this way: "there was no dialogue about a common approach because there was no common approach."[236] Groeber said it was "very tough" to talk to union officials, and she also indicated that AFGE's position was that they did not need to change, and further that all DoD was trying to do was contract out government civilian jobs.[237] She felt AFGE officials simply could not move beyond what she called the "old struggle of management against labor unions."[238] When face-to-face conversations did take place, they were very contentious and did not even yield an "intelligent conversation," according to Groeber.[239] Groeber also expressed regret over the fact that union officials could not take off their "militant hat" and understand that what DoD was really trying to do was save civil service jobs.[240]

Sanders expressed his belief that there was "no real effort" on the part of DoD to work with AFGE for three reasons.[241] First, there was still a lot of bitterness between the Bush Administration and unions due to the fight over human resources management provisions that were enacted in the HSA of 2002. Second, administration officials had learned during their struggle with unions over

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236. Helen Sullivan (Senior Associate Deputy General Counsel for Labor Relations, Department of Defense), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 17, 2007.

237. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, August 20, 2007.

238. Ibid.

239. Ibid.

240. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 20, 2007.

241. Ron Sanders (former Associate Director for Policy, Office of Personnel Management), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 18, 2007.

the HSA of 2002 that "collaboration didn't pay dividends."[242] Finally, DoD and administration officials did not think there was much AFGE could do to prevent the enactment of NSPS because Republicans held the majority in both houses of Congress at the time. Therefore, courting their support was not essential to its enactment.

AFGE officials expressed their own deep frustrations about trying to discuss the proposed NSPS legislation with DoD. Among other things, they argued that DoD failed to provide specific details about the system and why it was needed, that they had no real interest in collaborating with unions, and that they had a right-wing, anti-union agenda.

According to AFGE Chief of Staff Brian DeWyngaert, trying to get detailed information from DoD was always a problem because "they would never give [us] anything specific."[243] He said he consistently asked what specific problems DoD was trying to address, but all he got was what he termed "rhetoric," such as "we need the flexibility to win all future wars."[244]

DeWyngaert also believed that despite DoD assurances to the contrary, they had no real interest in collaborating with AFGE. During their initial meeting, DeWyngaert offered to work with DoD to create a "bold" new system, and then to go to Capitol Hill together to lobby for its enactment.[245] He argued that if they could collaborate, such jointly developed legislation would pass swiftly and then could be quickly implemented. Among the issues he proposed they address together were labor-management relations, employee recognition and

242. Ron Sanders (former Associate Director for Policy, Office of Personnel Management), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 18, 2007.

243. Brian DeWyngaert (Chief of Staff, American Federation of Government Employees), in interview with Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

244. Ibid.

245. Ibid.

compensation, adverse actions, and the appeals process.[246] However, DeWyngaert quickly realized that DoD was not really interested in working with AFGE on reform issues: "their disdain for working with the unions as legitimate partners overrode any interest in getting true reform."[247] Mark Roth, AFGE General Counsel, suspected the only reason DoD officials met with AFGE officials was to "cover themselves" for subsequent Congressional questions as to whether or not DoD had met with unions while developing its NSPS legislative proposal.[248] When such questions arose, DoD officials could then say, according to Roth, "absolutely, we've met with the unions, we've consulted with them, and we've heard their views."[249]

Additionally, DeWyngaert asserted that DoD had a right-wing, anti-union agenda. To support this claim, he pointed to a January 10, 2001, Heritage Foundation article, *Taking Charge of Federal Personnel*, written by George Nesterczuk, Donald Devine, and Robert Moffit.[250] The article encouraged President Bush to "install as many political appointees as necessary to advance his agenda, restore merit and accountability to the civil service, and reward high performers."[251] Additionally, it argued the President should attempt to build broad public support for comprehensive civil service reform, allow the public sector to handle certain key government functions, and reform compensation packages for federal employees.[252] DeWyngaert and Roth therefore believed the true motivation behind the NSPS legislative proposal was to further this right-

246. Brian DeWyngaert (Chief of Staff, American Federation of Government Employees), in interview with Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

247. Ibid.

248. Mark Roth (General Counsel, American Federation of Government Employees), in interview with Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

249. Ibid.

250. Devine, et al., "Taking Charge," January 10, 2001.

251. Heritage Foundation, "President Bush Should Make," January 22, 2001.

252. Ibid.

wing agenda. They suspected members of the Bush Administration intended to weaken employee unions, replace union workers with private contractors, and radically reform the current civil service system. If successful, they claimed these initiatives would result in an erosion of the rights and benefits of remaining union workers. They also pointed out the fact that Nesterczuk later became a Senior Advisor to the Director, OPM, and the NSPS Overarching Integrated Product Team (OIPT) Co-Chair during NSPS implementation.

Finally, DeWyngaert found the timing of the NSPS legislative proposal "ironic," since it was at about the same time Operation Iraqi Freedom began.[253] He pointed out that during the debate over the HSA of 2002, the justification the Bush Administration used for it was the "flexibility to fight terrorism," and when NSPS started being discussed, the justification used for it was also the "flexibility to fight terrorism and fight different wars in the future."[254] In other words, they suggested the Bush Administration used the "global war on terrorism" as its primary tool to garner support for both the HSA of 2002 and NSPS.

G. SUBMISSION OF THE NSPS LEGISLATIVE PROPOSAL TO CONGRESS

After resolving its major differences with OPM, and making an effort to meet and confer with AFGE officials, DoD was ready to finalize and submit their NSPS legislative proposal to Congress. They did so on April 10, 2003, when the General Counsel of the Department of Defense, William J. Hayes III, sent a memorandum of proposed legislation from DoD to the Speaker of the House and the President of the Senate.[255] This memorandum, entitled "The Defense Transformation for the 21st Century Act," was a proposal for legislation designed to "promote the national security" by providing a National Security Personnel

253. Brian DeWyngaert (Chief of Staff, American Federation of Government Employees), in interview with Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

254. Ibid.

255. DoD, *Defense Transformation Act*, cover memoranda.

System, a streamlined acquisition system, realistic appropriations and authorization laws, and the coordination of the activities of DoD with other departments and agencies concerned with national security.[256] Section 101 of the proposed act contained the provisions for NSPS.[257] Now fully created and coordinated within the Executive branch, the NSPS legislative proposal could move forward towards enactment in the Legislative branch.

256. DoD, *Defense Transformation Act*, cover memoranda.1.

257. Ibid., 3-25.

IV. PASSAGE OF SECTION 1101 OF THE FISCAL YEAR 2004 NATIONAL DEFENSE AUTHORIZATION ACT

The passage of Section 1101 of the NDAA for FY 2004 was a strategic process that included partisan politics, precise timing, and calculated rhetoric.

A. EARLY ATTEMPTS TO INTRODUCE LEGISLATION

Prior to the submission of The Defense Transformation for the 21st Century Act in April 2003, there had been a brief, half-hearted attempt by the DoD to introduce similar civil service reform legislation. In August 2001, Charlie Abell—former Principal Deputy Under Secretary of Defense for Personnel and Readiness, and former Professional Staff Member for the Senate Armed Services Committee (SASC) during the Clinton Administration—approached Senator Susan M. Collins (R-ME) and informed her of DoD's intent to propose such legislation for FY 2003. As a staff member for the SASC, Abell witnessed previous attempts at DoD civil service reform that did not leave the Executive branch.[258] Drawing from these experiences, he approached the NSPS legislation with ideas for getting it through: "When I came to the Department, [I had] a list of things I thought maybe we could work [on]...We had an advantage that I had been around the system a long time, so [I] learned how not to get to a door and find it closed."[259]

This first reform attempt began in late 2002 when Rumsfeld wanted to attach an NSPS-like bill as an amendment to the NDAA for FY 2003. Senator Daniel K. Akaka (D-HI), who was a member of the SASC at the time, opposed

258. Charlie Abell (Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

259. Ibid.

the amendment and led the effort to remove it.[260] "There were several attempts at arm twisting," recalled Nancy Langley, former Deputy Staff Director to Senator Akaka, but Senator Akaka rejected the amendment because he "didn't think that this was something that should go forward without real discussion."[261]

Groeber also recalled this earlier attempt, which she characterized as "very weak" and submitted at the "very last minute."[262] The DoD did not make a concerted effort to push this amendment, but Groeber believed it was a significant precursor to the push in 2003: "it was from this [earlier effort] that we built our playbook for the next year…it was the marker on the table."[263]

In early February 2003, Rumsfeld and Chu started seeking support for the fully developed NSPS legislative proposal. They knew it was essential to gain allies in Congress to ensure enactment of NSPS. More specifically, they needed support from key members of the four Congressional committees that held primary jurisdiction for civil service reform in the DoD: the SASC, the Senate Governmental Affairs Committee, the HASC, and the House Government Reform Committee.

The difference between late 2002 and early 2003 was the transition of Congressional control from the Democrats to the Republicans. During the 108th Congress, the Republicans held the majority in the House of Representatives, with 227 Republicans, 210 Democrats, and one Democrat-aligned Independent.[264] Republicans also held the majority in the Senate, with 51 Republicans, 48 Democrats, and one Democrat-aligned Independent.[265]

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260. Nancy Langley (former Deputy Staff Director for Senator Daniel K. Akaka (D-HI)), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

261. Ibid.

262. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

263. Ibid.

264. CRS, *Order Code RL21379*, 1.

265. Ibid.

B. COMMITTEE RESPONSIBILITIES

To better understand the role that each of the committees played in the passage of the legislation, it is important to understand their primary responsibilities.

1. Senate Armed Services Committee

The SASC has responsibilities primarily associated with "the common defense; the Department of Defense, the Department of the Army, the Department of the Navy, and the Department of the Air Force, generally."[266] The SASC also authorizes programs affiliated with the DoD in the annual defense authorization bill. Senator John W. Warner (R-VA) served as the Chairman of this committee during the 108th Congress, and Senator Carl Levin (D-MI) served as the ranking minority member.

2. Senate Governmental Affairs Committee

The Senate Governmental Affairs Committee has the responsibility of handling all proposed legislation regarding the federal civil service, including "evaluating the effects of law enacted to reorganize the legislative and executive branches of the Government."[267] During the 108th Congress, Senator Susan M. Collins (R-ME) was the Chairman of this committee, and Senator Joseph I. Lieberman (D-CT) served as the ranking minority member.

3. House Armed Services Committee

The HASC has jurisdiction over "laws, programs, and agencies in numerous titles of the United States," to include Title 10, which pertains to the armed forces.[268] The responsibilities of this committee cover all of the DoD and

266. Senate Armed Services Committee, "Jurisdiction."

267. Ibid.

268. House Committee on Armed Services, "Oversight Plan."

"common defense generally."[269] The committee also "carries out its oversight of the DoD and its subordinate departments…through activities involving the full committee and its standing subcommittees."[270] During the 108th Congress, Representative Duncan L. Hunter (R-CA) was the Chairman of this committee, and the ranking minority member was Representative Ike Skelton (D-MO).[271]

4. House Government Reform Committee

The House Government Reform Committee is the "main investigative committee in the U.S. House of Representatives."[272] The committee's responsibilities cover a multitude of jurisdictions within the government, to include the federal civil service.[273] As it relates to the federal civil service, the committee has jurisdiction over "the status of officers and employees of the United States, including their compensation, classification, and retirement."[274] During the 108th Congress, Representative Tom Davis (R-VA) was the Chairman of this committee, and Representative Henry A. Waxman (D-CA) was the ranking minority member.[275]

C. DOD EFFORTS TO GAIN CONGRESSIONAL SUPPORT FOR NSPS

Chu considered his role as the "chief proponent, in terms of testimony," on Capitol Hill, and he lobbied for support of NSPS by testifying before numerous committees on multiple occasions.[276] The first two committees Chu lobbied were the HASC and the House Government Reform Committee. In early February

269. House Committee on Armed Services, "Oversight Plan."

270. Ibid.

271. House Armed Services Committee, "Historical Full Committee Membership."

272. House Government Reform Committee, "Rules and Jurisdiction."

273. Ibid.

274. Ibid.

275. Office of the Clerk, "108th Congress, Committee Information."

2003, Chu attended a meeting with Representatives Hunter and Davis, during which he briefed them on the main components of NSPS and why the DoD urgently needed authorization to develop and implement it. According to Chu, both committee chairmen were quite supportive: "Midway though my presentation to Davis, Representative Hunter said 'David, you can stop. He's already convinced.'"[277] Chu remarked that "this was very much like knocking on the door that was already ajar."[278]

Rumsfeld met with and testified before many of the same committees as Chu. On February 5, 2003, Rumsfeld testified before the HASC while it was debating the NDAA for FY 2004.[279] In his testimony, he noted that Congress had recently enacted historic legislation to create a new Department of Homeland Security, which included civil service reform provisions that provided DHS with the authority to implement a number of civilian human resources management system flexibilities. Rumsfeld asked the committee members for their support in his quest to similarly transform the DoD:

> I feel we should now address the Department of Defense. We are already working with a number of you and with your staffs to help fashion legislation that we can present to you later this year to try to bring the Defense Department into the 21st century and to transform how it moves money, manages people and buys weapons.[280]

This transformation included giving the DoD greater flexibility in how it managed its civilian workforce.[281] His testimony was significant because it

276. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

277. Ibid.

278. Ibid.

279. House Committee, *National Defense Authorization Act,* 4.

280. Ibid., 7.

281. Ibid.

served as a notice to the committee that the DoD was creating a legislative proposal to change its civilian human resources management system.

Although Rumsfeld and Chu were the most highly visible DoD officials advocating for NSPS, many informal meetings were taking place behind the scenes to help gain momentum, including meetings with the members of the HASC and SASC. According to Abell, "Tom Davis organized several meetings with his committee members and us that were not hearings."[282] Abell noted that these meetings made the committee members "more comfortable" in light of the reports coming in from unions and other NSPS opponents:

> They were being told by constituents and rumor mills and unions what this thing did. [It] was very helpful to us to be able to go over there in an informal setting, not recorded and not in the public eye, and tell them and their staffs, 'no, no that's not true.' We would take every question.[283]

D. CONGRESSIONAL COMMITTEE HEARINGS ON CIVIL SERVICE REFORM

1. March 11, 2003 – SASC Subcommittee on Personnel

On March 11, the SASC Subcommittee on Personnel held a hearing to discuss the DoD's civil service reform plan. During the hearing, Chu explained why transforming the DoD's civilian human resources management system was necessary:

> We are working to promote a culture in the Defense Department that rewards unconventional thinking—a climate where people have freedom and flexibility to takes risks and try new things…so they can move money, shift people, and design and buy weapons

282. Charlie Abell (Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

283. Ibid.

quickly, and respond to sudden changes in our security environment. Today, we do not have that kind of agility.[284]

2. March 13, 2003 – HASC Total Force Subcommittee

Following the SASC subcommittee hearing, the HASC Total Force Subcommittee held DoD transformation hearings two days later on March 13. Testifying again on behalf of DoD was Chu, who reiterated Rumsfeld's earlier statement that the DoD would be "seeking legislative authority to create a national security personnel system."[285] Agility and flexibility were cited as the main reasons this reform was needed. Chu provided examples to illustrate the challenges DoD confronted daily with the existing system, specifically in terms of its attempts to shape the civilian workforce of the future. Pointing to the successes of the China Lake demonstration project, he stated that "we would like to emulate what China Lake has done in its much heralded demonstration over the last couple of decades," which he suggested would help in this transformation effort.[286]

E. INTRODUCTION OF LEGISLATIVE PROPOSALS THAT LED TO NSPS ENACTMENT

1. H.R. 1588 – The National Defense Authorization Act for FY 2004

On April 4, H.R. 1588, the NDAA for FY 2004 was introduced by Chairman Hunter and referred to the HASC for committee hearings and debate.[287] As introduced, the NDAA for FY 2004 did not contain any NSPS provisions because the DoD NSPS legislative proposal had not been submitted to Congress yet.[288]

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284. Senate Subcommittee on Personnel, *n.t.,* 1,2.

285. House Subcommittee, *National Defense Authorization Act,* 15.

286. Ibid., 16.

287. Foss, "National Security Personnel System," 31.

288. Library of Congress, *Bills and Resolutions, H.R. 1588 IH,* 7.

Despite this, H.R. 1588 eventually became the vehicle for NSPS enactment, but not until after the development of H.R. 1836, the Civil Service and National Security Personnel Improvement Act. Hearings for H.R. 1588 were scheduled for May 1 and 2. While the House discussed its proposed legislation, the Senate was as busy creating its own.

2. S. 927 – The Defense Transformation for the 21st Century Act

On April 28, 2003, Chairman Warner introduced S. 927, the Defense Transformation for the 21st Century Act, co-sponsored by Levin.[289] The bill was read twice and referred to the SASC. No further action was taken by the SASC on S. 927.[290] Senator Levin later joined Senator Collins in introducing S. 1166, the National Security Personnel Act, which also contained provisions that called for the establishment of NSPS.[291]

3. H.R. 1836 – The Civil Service and National Security Personnel Improvement Act

On April 29, 2003, Chairman Davis introduced H.R. 1836, the Civil Service and National Security Personnel Improvement Act.[292] The precursor and foundation for H.R. 1836 was DoD's The Defense Transformation for the 21st Century Act, which was sent to the Speaker of the House and the President of the Senate on April 10.[293] The overall purpose of DoD's proposed legislation was "to promote the national security," and it included provisions to transform how DoD managed its personnel, acquisitions process, installation management, and administration.[294] The goal of H.R. 1836 was to improve the flexibility and competitiveness of DoD civilian human resources management by making

289. *S. 927 IH,* 1.

290. Foss, "National Security Personnel System," 33.

291. Senate Committee, *Transforming the DoD,* 4.

292. Library of Congress, *H.R. 1836.*

293. DoD, *Defense Transformation Act*, cover memoranda.

294. Ibid., 1.

changes in selected federal personnel management statutory provisions.[295] H.R. 1836 was referred to the House Government Reform Committee so it could consider all provisions that fell within its jurisdiction and Chairman Davis set a hearing date of May 6. [296]

F. CONGRESSIONAL COMMITTEE HEARINGS ON NSPS

1. April 29, 2003 – House Government Reform Committee Civil Service and Agency Organization Subcommittee

Also on April 29, 2003, the Civil Service and Agency Organization Subcommittee of the House Government Reform Committee held hearings on NSPS. The following individuals testified during the hearing: Under Secretary Chu, OPM Deputy Director Dan G. Blair, and the AFGE National President Bobby L. Harnage, Sr. Representative Jo Ann Davis (R-VA) chaired this Subcommittee and Representative Danny K. Davis (D-IL) was the ranking minority member.

In her opening remarks to the committee, Chairman Jo Ann Davis stressed the importance of civil service reform, particularly for the DoD:

> We must find a way to recruit, reward, and retain our most talented employees and to get the most out of our Federal work force…the Defense Department…certainly has personnel needs that are different from the rest of the Federal Government. [297]

However, Representative Danny K. Davis expressed his concern over the timing and the manner in which it was created:

> This legislative proposal that we're considering today and which is scheduled to be marked up on Thursday was delivered to Congress only two and half weeks ago. In the human capital section of the

295. CRS, *Order Code RL31924*, ii.

296. Library of Congress, *H.R. 1836,* 1.

297. House Committee on Government Reform Subcommittee on Civil Service and Agency Organization, *Transforming the Defense Department: Exploring the Merits of the Proposed National Security Personnel System,* Serial No. 108-40, 108th Cong., 1st sess., April 29, 2003, 2.

> legislative proposal, it says that DoD's proposal is based upon the Department's civilian resources strategic plan…The GAO reviewed the plan…[and found] for the most part it lacked key elements found in fully developed plans. This weak foundation is what the legislative proposal is based on. Are we moving this legislation because it is good government, or because it is politically expedient?[298]

OPM Deputy Director Dan Blair supported the administration's position and Chu's earlier statements during the hearing. During Blair's testimony, Jo Ann Davis raised the issue of waiting to see results from DHS' use of personnel flexibilities before granting such flexibilities to DoD. In response, Blair noted that the agencies were different and, in contrast to DHS, DoD had "extensive experience in pay banding and pay-for-performance."[299]

While OPM publicly supported DoD's effort to enact NSPS, things were less cordial behind the scenes. Groeber recalled the tension between DoD and OPM during the process of enactment. She specifically described phone calls she received from Jo Anne Davis' staff members. The staff members reportedly told Groeber individuals from OPM were telling them that DoD was "lying," had not done its "homework," and that NSPS would be "an abysmal failure."[300] They also indicated that OPM told them Davis should not support the NSPS legislation.[301] Groeber lamented: "It's really hard when you think the

298. House Committee on Government Reform Subcommittee on Civil Service and Agency Organization, Transforming the Defense Department: Exploring the Merits of the Proposed National Security Personnel System, Serial No. 108-40, 108th Cong., 1st sess., April 29, 2003, 4.

299. Ibid.

300. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., August 20, 2007.

301. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

administration is going politically in one direction and you're getting sideswiped by people who are supposed to be on your team."[302]

In an attempt to calm the fears of the committee members and other members of Congress, Groeber worked extensively with the OSD Congressional Liaison to create a series of informal memoranda entitled "Dear Colleagues."[303] These memoranda, designed for NSPS supporters to send to their colleagues, provided answers to frequently asked questions and gave specific examples of past DoD civilian personnel management challenges that illustrated the urgent need for NSPS. They were created in an effort to limit the anxiety of members of Congress and reduce the back-dooring from OPM.

2. May 1, 2003 – House Armed Services Committee

On May 1, the HASC held hearings on H.R. 1588, the NDAA for FY 2004, and debated issues that included NSPS. The following individuals testified during the hearing: Under Secretary Chu, Comptroller General David M. Walker, AFGE National President Bobby L. Harnage, Sr., and Chairman, Joint Chiefs of Staff, General Richard B. Myers.

In his opening remarks to the committee, Chairman Hunter noted that "one of the most important and possibly controversial elements of this package is the creation of the National Security Personnel System."[304] The NDAA for FY 2004, the same as all NDAA bills, was a large document that contained all authorizations for the DoD for that fiscal year. By singling out the NSPS provisions of the bill, Hunter revealed the importance of the NSPS proposal. He welcomed debate over the legislation and expressed hope that the committee

302. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., August 20, 2007.

303. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

304. House Committee, *FY 04 NDAA,* 1232.

could “arrive at a balanced package of management tools to help the Department better execute its paramount mission: to keep our nation secure in a very uncertain and turbulent time.”[305]

Representative Skelton had a very different view regarding the DoD’s proposals and, more specifically, the limited amount of time allotted to debate them:

> I begin my remarks by using the phrase “shock and awe” on the issue that is before us…and I went from shock and awe to disbelief, and then I would say with sadness today that a good part of what is in front of us is cause for an abrogation of our congressional duty as spelled out in the Constitution.[306]

This sentiment illustrated Skelton’s serious concerns about the proposed legislation and the timing of the bill. He reminded the committee “Congress received this 200-page bill two weeks ago, one day before we left town before the recess,” and that “there [are] some 50 provisions included in the bill, and its scope is absolutely enormous.”[307] Nevertheless, even as Skelton expressed alarm over the speed with which the proposal had been introduced, others expressed their beliefs that the change was long overdue.

General Myers, for example, believed that the NSPS provisions were “all very critical to the future of joint warfighting…and our national security.”[308] He stressed his full support for NSPS, stating:

> The service chiefs and I have met on these issues many times and we strongly recommend that this committee incorporate the proposed legislation into the 2004 defense authorization bill.[309]

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305. House Committee, *FY 04 NDAA,* 1232.

306. Ibid., 1233.

307. Ibid.

308. House Committee on Armed Services, Fiscal Year 2004, National Defense Authorization Act—The Defense Transformation for the 21st Century Act, 108th Cong., 1st sess., May 1, 2003, 1239.

His statement was short and to the point; civil service reform was necessary and fully supported by the military leadership of the DoD. In the view of Groeber, his statements and presence at the hearing "helped tip us over the good side," and that "when the Chairman for the Joint Chiefs of Staff says, 'we need this,' they [Congress] listen."[310]

Harnage, from AFGE, strongly opposed the NSPS legislation and argued that Congress was handing its authority over to DoD and the Secretary of Defense:

> This bill is asking—no, it is insisting—that you hand your authority on each of these matters to the Department on each successive Secretary of Defense. They will make those decisions, not you…DoD's proposal allows every new Secretary of Defense, without congressional input, to impose a new flavor-of-the-week pay-and-personnel system of its own design. And employees and their representatives will have nothing whatsoever to say about it, and neither will you…their [DoD's] case is a plea for freedom to waiver the laws and regulations that comprise the federal civil service. Our opposition is a plea for freedom as well. We ask that you preserve our freedom from political influence, cronyism and the exercise of unchecked power. [311]

The debate over DoD's proposed reforms continued until May 2. Supporters and opponents debated the content of the legislation in the limited amount of time available prior to markup.

After just two days of committee debate on May 1 and 2, the HASC began its markup of H.R. 1588, which concluded on May 16. The bill finally passed the

309. House Committee on Armed Services, Fiscal Year 2004, National Defense Authorization Act—The Defense Transformation for the 21st Century Act, 108th Cong., 1st sess., May 1, 2003, 1239.

310. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

311. House Committee on Armed Services, Fiscal Year 2004, National Defense Authorization Act—The Defense Transformation for the 21st Century Act, 108th Cong., 1st sess., May 1, 2003, 1315.

HASC and was sent to the full House for consideration. On May 22, 2003, the House passed H.R. 1588 by a vote of 361-68.[312]

3. May 6, 2003 – House Government Reform Committee

Meanwhile, on May 6, the House Government Reform Committee held hearings on H.R. 1836, the Civil Service and National Security Personnel Improvement Act.[313] The following individuals testified during the hearing: Deputy Secretary of Defense Paul Wolfowitz, Vice Chairman, Joint Chiefs of Staff, General Peter Pace, Chief of Naval Operations (CNO), Admiral Vern Clark, and OPM Director Kay Coles James.

In his opening remarks, Chairman Tom Davis stated, "one of the most significant elements of this legislation is the National Security Personnel System proposal for the Department of Defense."[314] Referencing the debates the previous year regarding the Homeland Security Act of 2002, he reminded the committee that "the decades old system of hiring, firing, evaluating, promoting, paying and retiring was not appropriate for the new department of 170,000 civilian personnel."[315] Chairman Davis continued by stating:

> The legislative proposal that was put forth by the Administration to establish a new civil service system for the DoD is mirrored closely on the language that Congress provided to the Department of Homeland Security in establishing its human resources management system. I believe it is ambitious; [however], it is a reasonable proposal for DoD, a Department that has decades worth of experience in personnel and work force policy, and has had a number of trial policies that they have put in place.[316]

The foundation for the debate now laid, opponents of the legislation began their battle against the proposed changes.

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312. Library of Congress, *Bills and Resolutions, H.R. 1588.*

313. House Committee, *Instilling Agility,* I.

314. Ibid., 2.

315. Ibid.

Representative Waxman reiterated many of the same issues raised during the HASC hearing on May 1, including the limited amount of time allotted to debate the proposal. He feared the proposal would "destroy 100 years of civil service laws with a sledge hammer," and believed a bipartisan solution was possible if they were able to "slowdown this runaway legislative train."[317]

As it did in the May 1 and 2 hearings before the HASC, DoD sent top military officials to testify before the committee and explain why NSPS was necessary. Admiral Clark stated that he "wanted to be on record that we can't make it without them [civilians]…this bill will strengthen our human resource force, and I support wholly the principles that are embodied in this legislation."[318] General Pace stated that he needed to replace the existing civilian Marines that were preparing for retirement, hire new people quickly to remain competitive with the private sector, and have the ability to pay people based on merit.[319] These points were nearly identical to those made by Rumsfeld and Chu a month earlier.

When given the chance to give her statement, James illustrated a point that had been lost in the interpretation of the NSPS legislation. She believed that the essence of the legislation was to repair the outdated federal civil service system, not attack the civil servant. James noted:

> We have, in working with the Department of Defense, been assured that those things that are very dear to American civil service are and will be protected as we look at how we change the systems. The American civil servants deserve better systems within which to operate.[320]

316. House Committee, *Instilling Agility, 2*.

317. Ibid., 94.

318. Ibid., 108.

319. Ibid.

320. Ibid., 110.

As had been the case in the HASC, the time allotted to debate these sweeping reforms was limited to just a few days of hearings. The committee finished marking up H.R. 1836 on May 7 and returned it to the HASC for full consideration.

4. May 12, 2003 – Senate Governmental Affairs Committee Oversight of Government Management Subcommittee

On the Senate side of the Capitol, the Oversight of Government Management Subcommittee of the Senate Governmental Affairs Committee held civil service reform hearings on May 12, 2003. The following individuals testified during the hearing: Under Secretary Chu, Comptroller General David M. Walker, Assistant Secretary of the Air Force for Manpower and Reserve Affairs, Michael L. Dominguez, and Commander, Air Force Material Command, General Lester L. Lyles.

During his testimony, Chu referred to NSPS as a "new vehicle of personnel management to take our defense civilian workforce into the next century."[321] Showering the DoD's civilian workforce with praise, he commented on the "tremendous contributions" they had made to the DoD, but pointed out the "rigidities of the Title 5 system of personnel management make it difficult for our civilians to support our military."[322] Chu reminded the committee that numerous shortcomings had been identified not only by the DoD, but also by the Volcker II Commission, OPM, and in previous testimonies before the committee.[323]

Comptroller General David Walker also testified before the subcommittee on May 12. His views did not necessarily contradict the testimony of Chu, but he did make different suggestions as to the best way to fix the current system's shortcomings. Walker indicated his preference for implementing government-

321. Senate Committee on Governmental Affairs Subcommittee on Oversight of Government Management, the Federal Workforce, and the District of Columbia, *An Overlooked Asset: The Defense Civilian Workforce,* S Hearing 108-100, 108th Cong., 1st sess., May 12, 2003.

322. Ibid.

323. Ibid.

wide reforms, rather than just DoD-specific reforms. He also stated reform should only take place when an agency had "an infrastructure in place to make effective use of the new authorities."[324] While Walker believed DoD had every intention of implementing such an infrastructure, he noted it was not in place for a "vast majority of DoD at the present time."[325] He continued:

> In the absence of the right institutional infrastructure, granting additional human capital authorities will provide little advantage and could actually end up doing damage if the new flexibilities are not implemented properly.[326]

He also asserted that "adequate safeguards, reasonable transparency, and appropriate accountability" were all essential before the DoD moved forward in establishing a new civilian human resources management system.[327] Walker explained that DoD should not be allowed to move forward without meeting these conditions or there might be unintended consequences.

G. ADDITIONAL LEGISLATIVE PROPOSALS THAT LED TO NSPS ENACTMENT

1. S. 1050 – The National Defense Authorization Act for FY 2004

On May 13, 2003, Senator Warner introduced S. 1050, the Senate version of the NDAA for FY 2004. Peter Levine, former Minority Counsel to the SASC, remembered that DoD's legislative proposal "took a long time to get to Congress," and it was "too close to our mark for us [SASC] to consider it in our bill."[328] Consequently, Warner's bill did not contain any NSPS provisions.

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324. U.S. General Accounting Office, *Human Capital: DoD's Civilian Personnel Strategic Management and the Proposed National Security Personnel System,* GAO-03-493T, May 12, 2003, http://www.gao.gov/new.items/d03493t.pdf (accessed October 2, 2007), 2.

325. Ibid., 3.

326. Ibid., 9.

327. Ibid.

328. Peter Levine (former Minority Counsel, Senate Armed Services Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

Mainly due to the timing of the proposal, but also based on jurisdictional grounds, Warner elected to defer issues relating to NSPS to Senator Collins in the Senate Governmental Affairs Committee.[329] This deferment led to the creation of S. 1166, the National Security Personnel Act.

2. S. 1166 – The National Security Personnel Act

On June 2, Senator Collins, Chairman of the Senate Governmental Affairs Committee, introduced S. 1166, the National Security Personnel Act. This bill was in response to H.R. 1588 and had a number of co-sponsors, including Senator Levin, Senator George V. Voinovich (R-OH), Senator John E. Sununu (R-NH), Senator Ted Stevens (R-AK), and Senator Akaka.[330] The purpose of this bill was "to establish a Department of Defense national security personnel system," but also to counter the aspects of H.R. 1588 that Collins did not agree with.[331] Federal civil service fell under the jurisdiction of the Senate Governmental Affairs Committee, so Collins wanted to ensure all proposed legislation containing civil service reform provisions were referred to her committee for consideration.[332]

The committee held a hearing on S. 1166 on June 4. The following individuals testified during the hearing: Rumsfeld, David M. Walker, Bobby L. Harnage, Sr., and New York University Public Policy Professor, Paul C. Light. In her opening remarks, Chairman Collins stated:

> The primary goal of the Federal personnel system should be the recruitment and retention of the highest quality workforce to serve the people of the United States. Unfortunately, the antiquated system now in place does not always achieve that goal. Although there are many superb Federal employees, bureaucratic barriers

329. Peter Levine (former Minority Counsel, Senate Armed Services Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

330. *S. 1166 IS,* 1.

331. Ibid.

332. Senate Committee on Homeland Security and Governmental Affairs, "Jurisdiction."

> make it hard to reward their efforts and it has become increasingly difficult for agencies to attract and retain employees with technical expertise or special skills.[333]

Collins was a new chairman of the committee, and she tackled the DoD's NSPS legislative proposal in a bipartisan manner. She understood the rationale behind DoD's proposal for change, but she believed it needed to "strike a balance between promoting a flexible system and protecting employee rights."[334] S. 1166 was designed to strike this balance by granting "the administration's request for a new pay system, on-the-spot hiring authority, and collective bargaining," but denying the "authority to omit the Merit Systems Protection Board (MSPB) from the appeals process."[335]

In addition to denying the authority to omit the MSPB, S. 1166 also prevented the Secretary of Defense from waiving collective bargaining rights of employees.[336] While Collins acknowledged that S. 1166 imposed some limitations on the DoD, she also asserted that the bill allowed DoD to achieve its goals.[337]

Senator Levin co-sponsored S. 1166 and believed this bipartisan effort was different from the House version because it protected employees, which made the legislation more sustainable in the long run:

> Our bill will give the DoD the flexibility that it seeks to establish pay banding, rapid hire authority, a streamlined appeal process, and national level bargaining, but it would do so without giving up the employee protections that are needed to prevent abuse and are needed to make the civil service system work. That is real reform. It is workable reform.[338]

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333. Senate Committee, *Transforming the DoD,* 1.

334. Ibid., 2.

335. Ibid.

336. Ibid., 3.

337. Ibid.

338. Ibid., 5.

The Senate Governmental Affairs Committee marked up S. 1166 on June 17, and, on the same day, ordered the bill to be reported to the full Senate.[339] On September 5, 2003, S. 1166 was placed on the Senate calendar for full consideration.[340] S. 1166 never passed the Senate, but according to Levine, "it became the basis for the Senate's negotiating position in conference."[341]

H. MARKUP OF EACH SURVIVING CONGRESSIONAL BILL

Reviewing public documents of hearings and proposals relating to NSPS revealed the outcomes of the process, but the interview data we collected exposed the contentious issues that were debated behind the scenes.

1. H.R. 1836 – The Civil Service and National Security Personnel Improvement Act

According to Mason Alinger, former Deputy Legislative Director, House Government Reform Committee, Hunter was a "strong supporter of defense issues, a strong supporter of Rumsfeld, and was willing to do whatever he needed to do, but [Hunter] looked to Davis to craft this package."[342] As mentioned before, Davis modeled H.R. 1836 after DoD's The Defense Transformation for the 21st Century Act.

Alinger recalled the markup as "a nine hour markup" that was "very contentious."[343] The contentious issues were raised by opponents who were sympathetic to union positions that mainly related to collective bargaining rights, but also related to pay-for-performance provisions included in the legislation. "We had met with AFGE before," Alinger said, "but we [House Government

339. CRS, *Order Code RL31954*, 3.

340. *S. 1166 RS,* 1.

341. Peter Levine (former Minority Counsel, Senate Armed Services Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

342. Mason Alinger (former Deputy Legislative Director, House Government Reform Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

343. Ibid.

Reform Committee] were not able to accommodate their concerns."[344] During the markup, the committee "fought back some amendments … [and] accepted a couple … but by and large that was what defense [DoD] wanted."[345]

Abell remembered this markup vividly as the most stressful day in the process. Recalling that the markup went until after midnight, he feared that NSPS was not going to make it into the final bill, which he felt "would have been crushing."[346] Abell went on to say that people were working on the bill, "but we just didn't have enough Republicans…[and] most of the Democrats were going to vote party line."[347] He believed that if the House passed the bill, the Senate would follow along. Consequently, he tried to persuade as many members as he could to keep NSPS afloat.

Abell recalled members of the HASC sat in on the discussions of the House Government Reform Committee, but he remembered thinking, "when we've got members of Congress advocating for this, we're [DoD] just in the way."[348] Abell said he felt that he needed to "support [it] from the cheap seats."[349] Alinger, for his part, also illustrated the importance of this markup when he stated:

> They [White House representatives] were actively involved. This was a top priority for them at the time. The White House legislative affairs guy was at the markup, which is significant for a House markup … that carries some weight when members see the White House point person…standing there and watching them.

344. Mason Alinger (former Deputy Legislative Director, House Government Reform Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

345. Ibid.

346. Charlie Abell (Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

347. Ibid.

348. Ibid.

349. Ibid.

After the markup, the HASC "took that language and without changing a single word, put it into the NDAA for FY 2004 [H.R. 1588]…which was a pretty heavy lift for Davis."[350] With the debate closed, H.R. 1836 had successfully been incorporated into the NDAA for FY 2004 and moved NSPS closer to enactment.

2. H.R. 1588 -- The National Defense Authorization Act for FY 2004

According to Alinger, the HASC used the House Government Reform Committee markup of H.R. 1836 to their advantage during the markup of H.R. 1588, stating:

> This [H.R. 1836 markup] gave them [HASC] the leverage to say, "The Government Reform Committee has spoken on this. They're the experts on personnel policy. We'd love to consider your amendment, but the time has already come to weigh in and debate the personnel system. Let's move on to some other issues in the bill, non-personnel related."[351]

Relying heavily on the work of Davis, Chairman Hunter had facilitated the protection of NSPS. As mentioned earlier, the markup concluded on May 16. The bill finally passed the HASC and was sent to the full House for consideration. On May 22, 2003, the House passed H.R. 1588 by a vote of 361-68.[352]

3. S. 1050 – The National Defense Authorization Act for FY 2004

Upon receipt of H.R. 1588, the House version of the NDAA for FY 2004, the Senate struck out all of the text of S. 1050, its version of the NDAA for FY 2004, and amended it with content from H.R. 1588.[353] On June 17, the Senate Governmental Affairs Committee reported S. 1166 for consideration. Senator

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350. Mason Alinger (former Deputy Legislative Director, House Government Reform Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

351. Ibid.

352. Library of Congress, *Bills and Resolutions, H.R. 1588.*

353. Foss, "National Security Personnel System," 68.

Collins, a conferee on the conference committee for H.R. 1588, among others, expressed the hope that the provisions of S. 1166, as amended, would be seriously considered by the conferees as an alternative to the NSPS provisions included in H.R. 1588, which were placed in S. 1050.[354] Although the exact text of S. 1166 did not replace the NSPS text from H.R. 1588 used in S. 1050, many of the provisions that were the same or similar to S. 1166 were added to the final version of H.R. 1588 during the conference committee.[355]

I. FINAL CONFERENCE REPORT

On July 16, the House agreed on a conference to resolve differences between the House and Senate versions of the defense authorization bills, H.R. 1588 and S. 1050.356 The Senate and House both appointed conferees from the committees with jurisdiction over H.R. 1588.357 Jennifer Hemingway, former Professional Staff Member, Senate Governmental Affairs Committee, explained how Representative Tom Davis ended up participating in the conference committee:

> When the SASC goes to conference…all of the Senators on the [SASC] are all appointed as conferees. On the House side, because Armed Services is so large, they don't have the entire committee sit and, because they have multiple referrals for jurisdiction, they appoint outside conferees. Tom Davis was an outside conferee for the Title 5 changes. That is my longwinded way of saying that he [Davis] was there to help back up Duncan Hunter.[358]

Hemingway also noted that it was unusual to be discussing personnel matters in a conference where people would generally be more focused on

354. CRS, *Order Code RL31954*, 3.

355. Ibid.

356. Library of Congress, *Bills and Resolutions, H.R. 1588.*

357. Foss, "National Security Personnel System," 69.

358. Jennifer Hemingway (former Professional Staff Member, Senate Governmental Affairs Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

defense matters: “You’d see some of the members looking around [asking], ‘Why are we talking about labor relations?’”359 In her opinion, because neither a majority of conferees nor their staffers had a background in labor relations, “it really came down to what Collins, Levin, Hunter, Skelton, and Davis could agree to.”360

Deliberations over the final version of H.R. 1588, the NDAA for FY 2004, took place over a number of months and encompassed a number of contentious meetings. Abell recounted the insertion of the NSPS labor relations “sunset provision” as a turning point during one of these meetings. According to him, even though he had not gotten prior authorization from Chu, he proposed the provision in order to move the negotiations forward:

> I leaned over to Ginger [Groeber] and said, “Ginger, I’m going to say something and I do not want you to react.” So I said, “Clay, can I just throw something on the table here just for fun?,” and he said “sure, why not?” I said, “what if we put a sunset [provision] on the labor relations piece so that the department [DoD] has to demonstrate that they are doing this in good faith and if they’re not successful then it reverts back?” And you could see the Congressional guys lean back in their chairs and say, “oh yeah, we got ‘em.”[361]

This provision, Abell asserted, was what saved the legislation, and ended the meeting.

Although she was unsure of where the sunset provision originated, Hemingway thought this stipulation was what broke the logjam. “I think when we thought we came up with the clever trigger for labor relations…that Congress would have to act affirmatively to let it continue,” stated Hemingway.[362] As a

359. Jennifer Hemingway (former Professional Staff Member, Senate Governmental Affairs Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

360. Ibid.

361. Charlie Abell (Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

362. Jennifer Hemingway (former Professional Staff Member, Senate Governmental Affairs Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

result, she believed that "the unions quietly realized … that gave them four or five years to fight it out, [with the] hope for a Democratic Congress and stop the trigger."[363]

Despite the inclusion of the labor relations sunset provision, all differences were still not completely resolved and Collins was hesitant to sign the conference report. "Collins was the last person to sign the conference report," remembered Hemingway.[364] Levine believed Collins was under a tremendous amount of political pressure from fellow lawmakers and the White House to sign it:

> The majority of Senate conferees, it is safe to say, were opposed to the House provision, and in fact, were opposed to the provision we ended up with. But, you don't get a Conference Issue Report unless you have an agreement on every issue. The House conferees and the White House made it clear we were not going to have a Conference Issue Report unless we take their position on this…so in the end, Senator Collins was invited over to the White House…she did the best she could.[365]

After nearly four months of deliberation, the conference report, House Report 108-354, was reported for consideration, and then passed on November 11. The following day, the Senate also passed the conference report and forwarded H.R. 1588 and House Report 108-354 to President Bush.366 On November 24, 2003, President Bush signed H.R. 1588, the NDAA for FY 2004, into law. It became Public Law 108-136, and enacted NSPS.367

J. OPINIONS REGARDING NSPS ENACTMENT

During interviews with various DoD representatives, they shared their views on why they believed the NSPS legislation was enacted. Former Principal

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363. Jennifer Hemingway (former Professional Staff Member, Senate Governmental Affairs Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

364. Ibid.

365. Peter Levine (former Minority Counsel, Senate Armed Services Committee), in interview with Dr. Douglas A. Brook and Dr. Cynthia L. King, January 17, 2008.

366. Library of Congress, *Bills and Resolutions, H.R. 1588.*

367. Ibid.

Deputy Under Secretary of Defense for Personnel and Readiness, Charlie Abell shared his view:

> One of the reasons it [NSPS] was doable was that David [Chu] and I were willing to work on it. Other colleagues proposed transformational things and then sat back and waited for it to occur. Now, that's my assessment [and] that might be unkind, but it is my assessment. And then, when it didn't happen, or they'd run into roadblocks in the Congressor the Administration, it was, 'oh darn.'[368]

Former Deputy Under Secretary of Defense for Civilian Personnel Policy, Ginger Groeber, believed that the support provided by senior DoD leadership was important, especially support provided by senior military leaders, like Chairman of the Joint Chiefs of Staff, General Richard B. Myers.[369]

DoD Senior Associate Deputy General Counsel for Labor Relations, Helen Sullivan, remembered that the "stars aligned" to get NSPS approved when President Bush, Secretary of Defense Rumsfeld, and a Republican-led Congress came into power at the same time.[370] She also expressed her belief that the 2002 battle to gain human resources management system flexibilities for the newly-formed DHS had served as a template for DoD. Those who observed the process learned many things, but the key lesson was to not seek more widespread flexibilities than DHS gained.

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368. Charlie Abell (Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

369. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

370. Helen Sullivan (Senior Associate Deputy General Counsel for Labor Relations, Department of Defense), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 17, 2007.

V. DISCUSSION AND CONCLUSIONS

A. DISCUSSION

This thesis began with two research questions:

1. How was the NSPS legislative proposal created? More specifically, how was Section 101 of "The Defense Transformation for the 21st Century Act" created?

2. How was NSPS enacted? More specifically, how did Section 1101 of the NDAA for FY 2004, which authorized the establishment of NSPS, become law?

Having detailed the chronological, factual history of NSPS creation and enactment, we now turn our attention to examining how it was created and enacted through the lens of policy process frameworks. In Chapter II, we briefly explained the main concepts of seven popular frameworks. These frameworks provided a survey of potential theoretical lenses that could link this particular case to existing public policy theory. Through our analysis of the NSPS case, we suggest that there are three primary frameworks that deepen our understanding of how this legislation was enacted. Specifically, in this chapter, we view this case through the Punctuated-Equilibrium framework, the Multiple-Streams framework, and the Institutional Rational Choice framework.

1. Policy Equilibrium Punctuated

The Punctuated-Equilibrium framework asserts that political processes are "often driven by a logic of stability and incrementalism, but occasionally they also produce large-scale departures from the past."[371] Stability typically characterizes most policy areas, but when a crisis occurs, it can alter the public

371. Sabatier, *Theories of Policy Process*, 97.

policy realm dramatically.[372] From the enactment of the CSRA in 1978 until the enactment of the has of 2002, the U.S. Civil Service system experienced a period of relative stability. While the CSRA contained provisions authorizing demonstration projects, the opportunity to substantially reform the system did not arise until the policy equilibrium was punctuated. We argue this punctuation occurred in the aftermath of the 9/11 terrorist attacks, when the country was united against a common enemy and national security became a valid justification for initiating dramatic change. This crisis disrupted the policy equilibrium and provided an opportunity to enact meaningful change: following 9/11, a new policy window opened.

2. Policy Window Opened

> Policy windows open infrequently, and do not stay open long. Despite their rarity, the major changes in public policy result from the appearance of these opportunities.[373]
>
> - John W. Kingdon

In *Agendas, Alternatives, and Public Policies,* Kingdon introduced the concept of the "policy window" unexpectedly opening, giving the "policy entrepreneur" the opportunity to "rush and to take advantage of it."[374] Kingdon argued that these windows of opportunity might open in three circumstances: during a change of administration, a turnover of the political actors, or a shift in the mood of the nation.[375] Although George W. Bush had replaced Bill Clinton as President in January 2001, bringing about a turnover of political actors associated with a change of presidential administrations, past research and the current study suggest that the crisis of 9/11 was the primary catalyst that opened

372. Sabatier, *Theories of Policy Process*, 97.

373. Kingdon, *Agendas, Alternatives*, 166.

374. Ibid., 166, 175, 179.

375. Ibid., 168.

the policy window.[376] After 9/11, the security of the nation became front-page news on a daily basis, and "national security" was offered repeatedly as a rationale for personnel policy changes, both in DHS and in DoD.[377] After the policy window opened, policy entrepreneurs emerged and took the opportunity to pursue transformational initiatives, drawing on national security as a potent and effective justification.

The first instance of the Bush Administration taking advantage of the open window to achieve civil service reform occurred with the proposed new Department of Homeland Security. On November 25, 2002, President Bush signed into law the Homeland Security Act of 2002, which created DHS and initiated the largest government reorganization since the DoD was created in 1947.[378] Our analysis suggests that the DHS legislation served as a precursor for additional civil service reform in DoD. DoD's push for NSPS also operated within the policy window created by 9/11, and the successful passage of DHS personnel legislation offered an additional support for DoD to draw on.

As we indicated in our review of the history of federal personnel reform in Chapter II, the arguments that emerged in the NSPS debates were not new. However, when issues emerge within a policy window created by a crisis—or, in Baumgartner and Jones' terms, a "punctuation" in the policy equilibrium—they take on new traction in the policy environment. Kingdon's theory of policy and political streams offers additional theoretical insights into what occurred in the NSPS case.

376. Anderson and Bahr, "The Department of Homeland Security," 96-99.

377. Brook and King, "Civil Service Reform," 397-405.

378. Anderson and Bahr, "The Department of Homeland Security," 1.

3. Policy Streams and Political Streams Coupled by Policy Entrepreneurs

a. Policy Stream Was Civil Service Reform

Kingdon noted that instead of a more rational, linear model of decision making, the policy-making environment is more like a "garbage can," into which a mix of problems and solutions are poured.[379] Within that garbage can, there are both policy streams and political streams, and different issues may emerge as relevant depending on what else is happening in the environment.[380] In the policy stream, he asserts, "proposals, alternatives, and solutions float about, being discussed, revised, and discussed again."[381] For example, things such as tax reform proposals, environmental protection regulations, and education reform proposals all exist and are arguably important, but each may garner different levels of attention and support over time. Kingdon described these proposals, alternatives, and solutions as being "constantly in the policy stream, but then suddenly become elevated on the governmental agenda because they can be seen as solutions to a pressing problem or because the politicians find their sponsorship expedient."[382] In the case of civil service reform, there are many proposals that reside in the policy stream, but most of them would not normally garner a great deal of attention. However, within the window opened by 9/11, NSPS was elevated above other issues as particularly important and relevant given the current policy environment, or "political stream." Both the policy and political streams contributed to the elevation of NSPS as a key policy concern.

379. Kingdon, *Agendas, Alternatives*, 85.

380. Ibid., 87.

381. Ibid., 172.

382. Ibid.

b. Political Stream Was National Security

Kingdon described the political stream as one that is "composed of such things as public mood, pressure group campaigns, election results, partisan or ideological distributions in Congress, and changes in administration."[383] In the simplest terms, the political stream is the political environment at the time—including factors such as which party controls Congress and the White House, what issues are important, and the mood of the country. As we have described, after 9/11, the nation was united against a common enemy and very supportive of DoD and its efforts to ensure national security. Additionally, there was a Republican president, Republicans held the majority in both houses of Congress, and key leaders in Congress were very sympathetic to Rumsfeld's transformation agenda.

c. Policy Entrepreneurs Were Chu and Abell

One thing that happens when policy windows open is that policy entrepreneurs emerge. Policy entrepreneurs are characterized by their "willingness to invest their resources—time, energy, reputation, and sometimes money—in the hope of future return."[384]

The two important policy entrepreneurs in this case were Chu and Abell. Both had advocated for civil service reform well before the creation of the NSPS legislative proposal. For example, in 2001, Chu co-authored a chapter in a book, *Keeping the Edge: Managing Defense for the Future*, which argued in support of many of the provisions that were eventually included in the NSPS legislative proposal.[385] As previously noted, Abell served as a Professional Staff Member for the SASC during the Clinton Administration and attempted to gain

383. Kingdon, *Agendas, Alternatives*, 145.

384. Ibid., 122.

385. Carter and White, eds., *Keeping the Edge*, 227-233.

civil service reform within the DoD while in that position.[386] Additionally, Rumsfeld's transformation initiative coincided with the completion of the USD(P&R)'s Best Practices Initiative and Task Force, and Chu saw it as an opportunity to "consider extending these [Best Practices] authorities to the entire department."[387] Chu's staff then created a formal NSPS legislative proposal and began lobbying Representatives Hunter and Davis, both of whom could assist him in enacting NSPS.

Chu and Abell capitalized on the political and policy streams to get NSPS enacted, and they drew on national security as a justification for bringing about civil service reform in the DoD. Both individuals were energized by the opportunity presented by the opening of the policy window, and they were able to take full advantage of the punctuated equilibrium.

When a policy window opens and an issue increases in importance within the policy and political streams, the issue also moves from the micropolitical to the macropolitical environment.

4. DoD Civil Service Reform Moved to the Macropolitical Environment

> When a policy shifts to the macropolitical institutions for serial processing, it generally does so in an environment of changing issue definitions and heightened attentiveness by the media and broader publics. It is then that major changes tend to occur.[388]
>
> - True, Jones, and Baumgartner

In *Theories of the Policy Process*, True, Jones, Baumgartner assert that punctuation occurs when issues move from the micropolitical environment to the

386. Charlie Abell (Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

387. Dr. David S. C. Chu (Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

388. Sabatier, *Theories of Policy Process*, 100.

macropolitical environment.[389] When this shift occurs, the issue garners more exposure to a wider array of observers. This exposure helps ensure the issue is addressed and ultimately resolved.

Prior to the introduction of the NSPS legislative proposal, the issue of civil service reform within the DoD had almost always been a micropolitical issue. As such, its level of importance was limited to simply managing civilian employees in the most effective and efficient manner. Its level of exposure was limited to members within DoD, OPM, and AFGE, and the staffs of Congressional committees concerned with the issue of civil service reform, specifically the House Government Reform Committee and the Senate Governmental Affairs Committee. These organizations and agencies can be viewed as a policy sub-system.[390] OPM and the Congressional committees represent the normal micropolitical environment in which civil service policy normally resides. Once the NSPS legislative proposal was introduced, the issue of civil service reform within the DoD shifted to a more macropolitical issue. Its level of exposure and importance increased, and it suddenly became a matter of national security. Without the enactment of NSPS, supporters argued, DoD would not be able to effectively fight the global war on terrorism and ensure U.S. national security. With its heightened level of importance, and new sense of urgency, the issue gained new, more widespread, exposure. In addition to those who were previously involved, new actors became engaged. They included White House and OMB officials and Congressional committees with oversight over DoD, namely the HASC and SASC.

5. DoD Civil Service Reform Moved to a New Policy Venue

Historically, civil service reform efforts have occurred within a stable policy sub-system. They have been initiated within and led by OPM, and they have been pursued through the two Congressional committees tasked with oversight

389. Sabatier, *Theories of Policy Process*, 100, 102.

390. Baumgartner and Jones, *Agendas and Instability*, 21.

over the U.S. Civil Service system: the Senate Governmental Affairs Committee and the House Government Reform Committee. Because making sweeping changes to the system has historically proven quite difficult, these efforts have been rare. When they have occurred, most have failed.

In the case of NSPS enactment, the issue moved from a stable policy sub-system to a larger system involving new actors, such as the White House and OMB and the HASC and SASC. Using national security as the key justification, NSPS supporters included authorization for NSPS in the NDAA for FY 2004. Our analysis suggests that NSPS would never have been enacted if it had been introduced as a stand-alone bill, as was the case with the CSRA in 1978. NSPS, as a stand-alone bill, would likely have been bogged down and defeated if it had not been accompanied by a larger, more pressing issue that garnered widespread support. Additionally, had it been introduced by OPM, whose primary jurisdiction is personnel matters, OPM likely would not have had the political clout or support to get it passed. To pass, NSPS needed the new policy environment created after 9/11, which thrust personnel matters to a new level of urgency. In the words of Abell, DoD made the point that "this is national security" and it wrapped the U.S. flag around itself and said "we're national security…we're different."[391] This approach eventually resulted in the final version of the NSPS legislative proposal being debated and finalized in the SASC and HASC conference committee.

6. Policy Window Closed

Kingdon suggested there are three distinct reasons why the policy window of opportunity closes: participants feel they have addressed the problem through decision or enactment, participants fail to get action, or the events that prompted the window to open pass from the scene.[392]

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391. Charlie Abell (former Principal Deputy Under Secretary of Defense for Personnel and Readiness), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 19, 2007.

392. Kingdon, *Agendas, Alternatives*, 169.

Although it extends beyond the scope of this thesis, we suggest the policy window closed because the legislation was enacted. After the enactment of the legislation that authorized the creation of DHS and NSPS, politicians believed they had remedied the existing problems through the enactment of both the HSA of 2002 and Section 1101 of the NDAA for FY 2004.

A final piece of our analysis addresses the controversial relationship between OPM, DoD, and AFGE throughout the NSPS legislative battle.

7. Clash of Institutions

As Sabatier noted, the Institutional Rational Choice policy process framework suggests that "institutional rules alter the behavior of intendedly rational individuals motivated by material self-interest."[393] In other words, individuals act in a manner that is consistent with the role, interests, and goals of the institution to which they belong.

In the creation and enactment of NSPS, the roles of the primary institutions involved in the process were critical. Each of these institutions shaped the debate and the process through which enactment occurred. Each presented its position and fought vigorously for what it believed.

After reviewing and analyzing all publicly available documents and transcripts from the interviews we conducted with key personnel from each institution, we developed a clear understanding of the role each institution envisioned for itself. DoD saw itself as the protector of U.S. national security, OPM saw itself as the protector of the U.S. Civil Service system, and AFGE saw itself as the protector of the rights of union workers. Additionally, we determined some of the key goals of each organization were as follows: DoD wanted to transform itself by becoming more agile and flexible, OPM wanted to preserve the merit system principles, and AFGE wanted to prevent the creation of an unfair civilian human resources management system. Thus, each of the three

393. Sabatier, *Theories of Policy Process*, 8.

institutions assumed a different role and had different core goals throughout the legislative battle. These differences led to a clash of institutions during the creation and enactment of NSPS.

As policy entrepreneurs, Chu and Abell faced a number of challenges in their attempt to create and enact NSPS, the most notable of which was the opposition they faced from members of AFGE and OPM. It should come as no surprise that one of DoD's primary opponents in its attempt to enact NSPS was AFGE. AFGE believed a large number of the NSPS provisions were anti-worker and anti-union, and therefore strongly opposed it. Due to the political climate at the time, however, there was little AFGE could do to prevent enactment of NSPS. The White House supported it, Republicans held a majority in both houses of Congress, and the DoD experienced strong public and bipartisan Congressional support in the aftermath of the 9/11 terrorist attacks.

The more surprising DoD opponent was OPM, who believed DoD went out of its way to work around it during the creation and enactment of NSPS. This clash was quite unusual because DoD and OPM were supposed to be on "the same side" and working together to promote a common Bush Administration agenda.[394] OPM disagreed with DoD on a number of specific issues, such as the preservation of veterans' preference and the creation of a separate Senior Executive Service (SES) for the DoD, but there were two, higher-level points of contention between the two institutions. First, OPM wanted to pursue government-wide civil service reform, instead of agency-specific reform. In their view, if you changed the U.S. Civil Service system for each individual government agency, eventually you would no longer have a unified system. OPM also wanted to prevent one agency from gaining an advantage over another through agency-specific reform. OPM's goal, according to Blair, was to avoid giving "any agency an advantage over another in terms of recruitment and

394. Ginger Groeber (former Deputy Under Secretary of Defense for Civilian Personnel Policy), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, Washington, D.C., September 20, 2007.

retention or other authority."[395] Second, OPM wanted to actively participate in the process of creating and implementing NSPS, instead of allowing DoD to do it on its own. As James pointed out, OPM believed its primary mission was to be "the keeper of the U.S. Civil Service."[396] A key part of this mission, OPM believed, was ensuring the protection and enforcement of the merit system. In the view of Blair, OPM was "charged with the enforcement of the merit system principals and it really took that role very seriously."[397]

B. CONCLUSION

As has been established, DoD largely worked around OPM and AFGE, instead of working with them, in order to get NSPS enacted. While it could be argued that this was a successful strategy in the short run, it may have some negative implications in the long run. For the most part, DoD only made compromises on NSPS to get it enacted, not to appease OPM. DoD made even less of an effort to work with AFGE, largely ignoring it during the NSPS creation and enactment phases. While DoD certainly compromised on some issues surrounding NSPS, it achieved the majority of what it wanted; however, the same cannot be said for OPM and AFGE. Still, OPM maintained a role in the reform process and AFGE ensured collective bargaining language was included in the final version of the NSPS legislation.

The story of NSPS creation and enactment serves as a case study for other agencies seeking to enact reform. One key lesson is that reform efforts are much more likely to be successful if the policy equilibrium is punctuated, which opens a policy window, allowing policy entrepreneurs to emerge and capitalize

395. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

396. Kay Coles James (former Director, Office of Personnel Management), in interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, LT David Anderson, and Capt Joshua Bahr, September 23, 2005.

397. Dan Blair (former Deputy Director, Office of Personnel Management), in phone interview with Dr. Douglas A. Brook, Dr. Cynthia L. King, Maj Shane Prater, and CPT Eric Timmerman, September 10, 2007.

on policy and political streams, which enables a reform agenda to move from the micro-political to the macro-political environment. Another question that this thesis raises is about the utility of working around versus with your opponents. As this case illustrates, DoD made some collaborative efforts, but they largely proceeded through the legislative battle on their own. While this strategy had advantages for passing the legislation, it had implications for later implementation. One lesson from this case is that both advantages and disadvantages need to be considered in strategy formulation, and policy makers should consider the benefits of potentially winning the battle at the risk of losing the war. In the case of NSPS, DoD angered and alienated OPM, AFGE, and a number of Congressional Democrats. These opponents could not stop the creation or enactment of NSPS, but some of the members of each institution bitterly fought NSPS implementation. Only the future can tell us what the long-term implications may be and how successfully NSPS will be implemented across DoD.

C. RECOMMENDATIONS FOR FUTURE RESEARCH

As NSPS continues to be implemented within DoD, there are a number of topics that deserve further research.

First, the process of NSPS implementation should be studied. This would entail studying the period from NSPS enactment to present day and include an examination of the establishment of the Program Executive Office and Overarching Integrated Product Team. It would also include the publication of proposed NSPS regulations, AFGE lawsuits, training efforts for DoD's civilian supervisors, and the process through which civilian employees were converted to NSPS.

Second, the cost and effectiveness of NSPS implementation should be studied. According to documents provided by USD(P&R), NSPS was supposed

to be cost neutral or even result in modest savings.[398] Annex D of USD(P&R)'s Civilian Human Resources Strategic Plan indicated efforts would be made to evaluate NSPS. More specifically, Objective 2.3 of the plan prescribed that the organization would determine and collect "baseline data" for NSPS evaluation and "develop evaluations plans for NSPS."[399]

Third, NSPS should be compared and contrasted to the proposed DHS civilian human resources management system, MAX HR. There were parallels between the legislative proposals for each system and the justification used to lobby for them, but does this hold true for the resulting systems? Future studies should examine how are they similar and different and which has been more successfully implemented and why.

Finally, policy scholars should pay close attention to the successes and challenges facing personnel management reform in the long term. Specifically, given the relationship between different institutions who play a role in both enactment and implementation in personnel management reform, what impact does level of collaboration have on long term success of reform?

398. Under Secretary of Defense for Personnel and Readiness, "Estimated Cost Savings – National Security Personnel System," March 28, 2003.

399. DoD, *Civilian H.R. Strategic Plan, Annex D*, 5.

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APPENDIX 1: TIMELINE OF KEY EVENTS

Date	Event
2 Mar 84	Section 6 of the Civil Service Miscellaneous Amendments Act of 1983 authorized the China Lake Demonstration Project
89	The National Commission on Public Service, chaired by Paul Volcker, issued its report, describing a "quiet crisis" in the federal civil service
5 Nov 90	Federal Employees Pay Comparability Act (FEPCA) passed
5 Oct 94	Section 342 (as amended by NDAA for FY 2000, Section 1109 and NDAA for FY 2001, Section 1114) of the NDAA for FY 1995 (PL 103-337) signed into law; authorized the Secretary of Defense to conduct personnel demonstration projects at DoD laboratories designated as Science and Technology Reinvention Laboratories (STRLs)
10 Feb 96	Section 4308 (as amended by NDAA for FY 1998, Section 845 and NDAA for FY 2003, Section 813) of the NDAA for FY 1996 (PL 104-106) authorized the Acquisition Workforce Demonstration Project (AcqDemo)
Aug 98	OPM published "HRM Policies and Practices in Title 5-Exempt Organizations," which provided an overview of the constraints and inflexibilities of the merit processes embedded in the current Title 5 civilian personnel system
Feb 00	Final report of The Defense Science Board Task Force on Human Resources Strategy released
Sep 01	The President's Management Agenda for FY 2002 released
Jan 01	The GAO added strategic human capital management to the list of federal programs and operations identified as "high risk"
15 Feb 01	*Road Map for National Security: Imperative for Change*, the Phase III report of the U.S. Commission on National Security/21st Century (the "Hart-Rudman Commission") published
17 Feb 01	President Bush issued an executive order dissolving the National Partnership Council, a labor-management council which was

created by President Clinton in 1993—his order also revoked the requirement for government agencies to establish individual partnership councils and increase union involvement in agency decision-making

29 Mar 01 Former Secretary of Defense James R. Schlesinger and Admiral Harry D. Train (USN, Retired) represented the U.S. Commission on National Security/21st Century (the Hart-Rudman Commission) before a joint session of the Senate Subcommittee on Oversight of Government Management, Restructuring, and the District of Columbia and the House Subcommittee on Civil Service and Agency Organization—they stated "it is the Commission's view that fixing personnel problems is a *precondition* for fixing virtually everything else that needs repair in the institutional edifice of U.S. national security policy"

Aug 01 USD(P&R) directed the development of the DoD Civilian Human Resources Strategic Plan

Sep 01 DoD Civilian Personnel Policy Council (CPPC) held a "Kick-Off Session" to develop a methodology for strategic planning that entailed review and analysis of the OPM Strategic Plan, the DoD Strategic Plan, and the QDR

30 Sep 01 DoD Quadrennial Defense Review issued, calling for a "transformation of U.S. forces," and "a strategic human resources plan for its military and civilian personnel"

15 Oct 01 Bush Administration submitted to Congress the Managerial Flexibility Act of 2001—among other things, it proposed giving federal agencies and managers increased discretion and flexibility in attracting, managing, and retaining a high quality workforce

18 Mar 02 Kay Coles James, Director, OPM, testified before the Senate Governmental Affairs Committee Subcommittee on International Security, Proliferation, and Federal Services regarding Federal Employee Management Flexibilities

Mar 02 USD(P&R) established the DoD Human Resources Best Practices Task Force to develop a single demonstration project construct for human resources flexibilities

12 Apr 02 USD(P&R) published the first integrated DoD-wide Civilian Human Resources Strategic Plan

Apr 02	OPM published a white paper entitled *A Fresh Start for Federal Pay: The Case for Modernization*
May 02	DoD Human Resources Best Practices Task Force provided an in-process review briefing to USD(P&R) and USD(AT&L)
Jul 02	DoD Human Resources Best Practices Task Force provided its final briefing to USD(P&R) and USD(AT&L)
Fall 02	Details of the DoD "Best Practices Initiative," were briefed to the staffs of the Civil Service subcommittees in the House and Senate
Aug-Dec 02	A "steering group" of senior leaders reviewed, revised, and approved the Human Resources Best Practices Task Force system design in order to broadly apply the results to all current demonstration projects
Nov 02	NDAA for FY 2003 Conference Report (House Conference Report 107-772) directed the Secretary of Defense to review and report on the DoD Civilian Human Resources Strategic Plan and demonstration projects to assess the effectiveness of demonstration authorities in reshaping the DoD civilian workforce
25 Nov 02	President Bush signed H.R. 5005, the Homeland Security Act of 2002, into law (P.L. 107-296)
Dec 02	USD(P&R) and USD(AT&L) received final Human Resources Best Practices Task Force products that had been reviewed, revised, and approved
Jan 03	OPM's 2002 *Summative Evaluation of DoD Science and Technology Reinvention Laboratories (STRL) Demonstration Projects* report released
18 Jan 03	Report of the National Commission on the Public Service (Volcker II Commission) entitled *Urgent Business for America: Revitalizing the Federal Government for the 21st Century,* released
Feb 03	AFGE National Office Staff briefed by DoD officials about the NSPS legislative proposal
5 Feb 03	HASC held hearings on the Defense Authorization Request for FY 2004

11 Mar 03 SASC Personnel Subcommittee held hearings on the Defense Authorization Request for FY 2004

13 Mar 03 HASC Total Force Subcommittee held hearings to discuss total force transformation

29 Mar 03 Charlie Abell, Deputy Under Secretary for Personnel and Readiness, spoke to members of AFGE in St. Louis, MO

31 Mar 03 SASC Emerging Threats and Capabilities Subcommittee held hearings on military and civilian personnel programs included in S. 1050, the NDAA for FY 2004

1 Apr 03 Jacqueline Simon, Public Policy Director, AFGE, testified before the House Government Reform Committee Subcommittee on Civil Service and Agency Organization in opposition to replacing the General Schedule system with a pay-for-performance system

2 Apr 03 *Federal Register* notice published proposing the revision (by amendment) of existing Science and Technology community personnel demonstration projects to comply with best practices as identified by the HR Best Practices Task Force and revised and approved by senior leadership

4 Apr 03 HASC Chairman Duncan Hunter introduced H.R. 1588, the NDAA for FY 2004

10 Apr 03 General Counsel of the DoD sent "The Defense Transformation for the 21st Century Act" to the Speaker of the House of Representatives and the President of the Senate

28 Apr 03 Senator John Warner (R-VA) introduced S. 927, the Defense Transformation for the 21st Century Act of 2003

29 Apr 03 House Government Reform Committee Chairman Tom Davis introduced H.R. 1836, the Civil Service and National Security Personnel Improvement Act

29 Apr 03 House Government Reform Committee Subcommittee on Civil Service and Agency Organization held hearings on NSPS

1-2 May 03 HASC held hearings on H.R. 1588, the NDAA for FY 2004

6 May 03	House Government Reform Committee held hearings on H.R. 1836, the Civil Service and National Security Personnel Improvement Act
7 May 03	House of Representatives completed markup of H.R. 1836 and forwarded it to the HASC
12 May 03	Senate Governmental Affairs Committee Subcommittee on Oversight of Government Management held hearings regarding civil service reform
13 May 03	Senator John Warner (R-VA) introduced S. 1050, the NDAA for FY 2004
16 May 03	HASC completed markup of H.R. 1588 and forwarded it to the full House for consideration
19 May 03	House Government Reform Committee reported H.R. 1836 to the full House for consideration
22 May 03	House of Representatives passed H.R. 1588, the NDAA for FY 2004—Section 1112 authorized NSPS with some changes from the original DoD proposal
	Senate passed S. 1050, the NDAA for FY 2004—the bill did not contain authority for NSPS
2 Jun 03	Senator Susan Collins, Chairman of the Senate Governmental Affairs Committee introduced S. 1166, the National Security Personnel System Act
4 Jun 03	Senate Governmental Affairs Committee conducted a hearing on S. 1166
17 Jun 03	Senate Governmental Affairs Committee passed S. 1166 by a vote of 10-1
Jul 03	First Defense Human Resources Planning Board meeting held
	Acquisition Demonstration Project Program Office submitted a draft *Interim Evaluation Report* to OPM
	USD(P&R) completed *The Department of Defense Assessment of Existing Civilian Personnel Demonstration Authorities* as required by House Conference Report 107-772

16 Jul 03 House of Representatives agreed to conference with Senate over differences between H.R. 1588 and S. 1050

Aug 03 John Gage replaced Bobby Harnage, Sr. as National President, AFGE

18 Aug 03 USD(P&R) submitted *The Department of Defense Assessment of the Existing Civilian Personnel Demonstration Authorities* report to the SASC, HASC, Senate Governmental Affairs Committee, and the House Committee on Government Reform as required by House Conference Report 107-772

11 Nov 03 House of Representatives approved the conference agreement of H.R. 1588

12 Nov 02 Senate approved the conference agreement of H.R. 1588

24 Nov 03 President Bush signed H.R. 1588, the NDAA for FY 2004, into law (P.L. 108-136), enacting NSPS

APPENDIX 2: LIST OF KEY PLAYERS

Name	Role
*Charlie Abell	Former Principal Deputy Under Secretary of Defense for Personnel and Readiness and NSPS Overarching Integrated Product Team (OIPT) Co-Chair
*Dan G. Blair	Former Deputy Director, OPM and Acting Director, OPM
*Andrew Card	Former White House Chief of Staff
*David S.C. Chu	Under Secretary of Defense for Personnel and Readiness
Sen. Susan Collins (R-ME)	Former Chairman, Senate Governmental Reform Committee; introduced S. 1166, the National Security Personnel System Act
Rep. Tom Davis (R-VA)	Former Chairman, House Government Reform Committee; introduced H.R. 1836, the Civil Service and National Security Personnel Improvement Act
*Brian DeWyngaert	Chief of Staff, AFGE
John Gage	Current National President, AFGE
*John Gartland	Former Associate Director for Legislative Affairs, OPM
*Ginger Groeber	Former Deputy Under Secretary of Defense for Civilian Personnel Policy
Bobby L. Harnage, Sr.	Former National President, AFGE
*Doris Hauser	Former Senior Policy Advisor to the Director, OPM

Rep. Duncan Hunter (R-CA)	Former Chairman, HASC; introduced H.R. 1588, the NDAA for FY 2004
Kay Coles James	Former Director, OPM
Clay Johnson	Deputy Director for Management, OMB
Sen. Carl Levin (D-MI)	Former ranking minority member, SASC
*Peter Levine	Former Minority Counsel, SASC
Paul C. Light	Founding Director, Brookings Center for Public Service and Senior Adviser, National Commission on the Public Service
General Richard B. Myers	Former Chairman, Joint Chiefs of Staff
*Mark Roth	General Counsel, AFGE
Donald Rumsfeld	Former Secretary of Defense
*Ronald P. Sanders	Former Associate Director for Policy, OPM
*Robert Shea	Former Counselor to the Deputy Director for Management, OMB
Jacqueline Simon	Public Policy Director, AFGE
*Helen Sullivan	Former Associate Deputy General Counsel, Department of Defense — drafted NSPS portion of “The Defense Transformation for the 21st Century Act”
David Walker	Comptroller General of the U.S.
Sen. John Warner (R-VA)	Former Chairman, SASC; introduced S. 927, the Defense Transformation for the 21st Century Act of 2003
Paul Wolfowitz	Former Deputy Secretary of Defense

*Asterisks denote individuals interviewed by the authors and/or the thesis advisors

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